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TITLE 23

PUBLIC UTILITIES AND REGULATED INDUSTRIES

(CHAPTERS 1-29 IN VOLUME 22; CHAPTERS 30-59 IN VOLUME 23A; CHAPTERS 60-73 IN VOLUME 23B; CHAPTERS 74-87 IN VOLUME 24A)

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SUBTITLE 3. INSURANCE

CHAPTER 88

PROPERTY INSURANCE

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 3. RURAL RISK UNDERWRITING.
- 5. PORTABLE ELECTRONICS INSURANCE.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-88-102. Paying costs of volunteer fire department services.

23-88-101. Valued policy law.**RESEARCH REFERENCES**

ALR. Applicability of Valued-Policy Statutes to Flood, Wind, and Hurricane Damage. 62 A.L.R.6th 227.

23-88-102. Paying costs of volunteer fire department services.

(a) The amount charged by a volunteer fire department for the cost of its services in responding to a fire on or an emergency call concerning the property of a nonmember within its district shall not exceed an amount equal to the fair market value of the service rendered, except that a claim for services in responding to a fire involving only personal property shall be allowed only for personal property of nonmembers, and the claimed amount shall not exceed five hundred dollars (\$500).

(b)(1) When a volunteer fire department responds to a fire occurring or responds to a 911 or other fire emergency call within its district and the property that is the subject of the alarm is owned by a nonmember and insured in case of any damage resulting from a fire, the insurance company insuring the property against loss shall pay to the volunteer fire department the fair market value of its services from the insurance proceeds.

(2) Notice to both the insurance company and to the insured nonmember by the volunteer fire department for its costs of services shall be by certified mail within thirty (30) days after the date of the services rendered.

(c)(1)(A) In the event a nonmember desires to contest an assessment, the nonmember may notify the fire department board of his or her objection to the assessment, and the fire department board shall file a civil suit in the nearest district court within ten (10) days asking for the amount claimed by the fire department.

(B) The district court shall give a hearing on the matter within ten (10) days to determine if the amount claimed is fair compensation for the services rendered.

(2) If the amount of the assessment is contested in district court, the fire department shall immediately notify the insurer of the nonmember's property by certified mail, and the insurer shall upon notification pay into the registry of the court an amount equal to the assessment made by the volunteer fire department for fire services.

(d) The insurer shall not be liable for any amount of money that exceeds the face amount of the policy unless the provisions of the policy provide otherwise.

History. Acts 1987, No. 836, § 2; 1991, No. 984, §§ 1, 2; 1997, No. 1150, § 5; 2007, No. 581, § 2.

SUBCHAPTER 3 — RURAL RISK UNDERWRITING

SECTION.

23-88-303. Arkansas Rural Risk Underwriting Association — Plan of property insurance.

SECTION.

23-88-306. Provisions of plan.

Effective Dates. Acts 2005, No. 2004, § 6: Apr. 11, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to regulation of farmers' mutual aid associations or companies are inadequate for the protection of the public and that this act is immediately necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 588, § 2: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that fire is one (1) of the leading causes of loss in the state; that funding is essential to combat these losses; and that the annual assessment on rural risk underwriters which provided reimbursement for the mailing of fire department renewal subscription notices expired on December 31, 2006. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-88-303. Arkansas Rural Risk Underwriting Association — Plan of property insurance.

(a)(1) All insurers licensed to transact property insurance, as defined in § 23-62-104, shall become members of the Arkansas Rural Risk Underwriting Association.

(2) For the purposes of this section, farmers' mutual aid associations or companies are insurers and are subject to the assessments and other requirements imposed on insurers under this section.

(b) This association or company shall provide a plan of property insurance to insurable rural risk applicants. Rural risk applicants are those applicants seeking insurance on risks located in geographic areas to be determined "rural areas" by the governing board, subject to the approval of the Insurance Commissioner.

History. Acts 1985 (1st Ex. Sess.), No. 25, § 3; A.S.A. 1947, § 66-6103; Acts 2005, No. 2004, § 5.

23-88-306. Provisions of plan.

(a)(1) The plan shall provide for the efficient, economical, and fair administration of the Arkansas Rural Risk Underwriting Association and shall be consistent with the purposes of this subchapter. Therefore, the plan shall include provisions for the equitable apportionment among the association's members of the expenses, profits, and losses arising from the association's rural risk writings.

(2) A member's participation in the association's expenses, profits, and losses shall be in the proportion that the net direct property insurance premiums of each member, written in this state during the preceding calendar year, bears to the aggregate net direct property insurance premiums of all members of the association, written in this state during the preceding calendar year.

(3)(A) The governing board shall be empowered to make assessments as may be necessary to provide funds needed to make payment of all loss claims and expenses of the association.

(B) Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year.

(C) If the maximum assessment in any calendar year results in a deficiency in premiums to losses, assessments may be made in the next and any successive calendar year.

(4) Further, the plan shall provide for an annual credit to members for basic property insurance voluntarily written on rural risks. This dollar credit shall relieve a member wholly or partially from participation in the association's expenses and losses.

(b) The plan shall also establish reasonable underwriting standards, subject to the approval of the Insurance Commissioner. Any applicant that meets these standards will be an insurable risk and entitled to property insurance through the association.

(c) The plan shall include deductibles, rules for classification of risks, rate modifications consistent with the objective of providing and maintaining funds sufficient to pay rural risk losses and expenses, and the limits of coverage available.

(d) The commissioner shall assess all members an amount not to exceed two hundred dollars (\$200) annually, if needed, for the expense of mailing fire department renewal subscription notices.

History. Acts 1985 (1st Ex. Sess.), No. 25, § 5; A.S.A. 1947, § 66-6105; Acts 2003, No. 1326, § 1; 2007, No. 588, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Insurance Law, Fire Department Renewal Subscription Expenses, 26 U. Ark. Little Rock L. Rev. 484.

Survey of Legislation, 2003 Arkansas General Assembly, Insurance Law, Home Loan Protection Act, 26 U. Ark. Little Rock L. Rev. 484.

SUBCHAPTER 5 — PORTABLE ELECTRONICS INSURANCE

SECTION.

23-88-501. Definitions.

23-88-502. Licensure of vendors.

23-88-503. Requirements for sale of portable electronics insurance.

23-88-504. Authority of vendors to sell or offer portable electronics insurance.

SECTION.

23-88-505. Suspension or revocation of license.

23-88-506. Termination of portable electronics insurance.

23-88-507. Application for license and fees.

23-88-501. Definitions.

As used in this subchapter:

(1) "Customer" means a person who purchases portable electronics or services;

(2) "Enrolled customer" means a customer who elects to have coverage under a portable electronics insurance policy issued by a vendor;

(3) "Location" means, as directed to residents of the State of Arkansas:

(A) A physical location in this state;

(B) A website; or

(C) A call center site or similar location;

(4) "Portable electronics" means electronic devices that are portable in nature, including the accessories and services related to the use of the electronic device;

(5)(A) "Portable electronics insurance" means insurance for the repair or replacement of portable electronics that includes the following causes of loss:

(i) Loss;

(ii) Theft; and

(iii) Inoperability due to mechanical failure, malfunction, damage, or other similar causes of loss.

(B) "Portable electronics insurance" does not include a service contract governed by the Service Contracts Act, § 4-114-101 et seq.;

(6) "Portable electronics transaction" means:

(A) The sale or lease to a customer of portable electronics by a vendor; or

(B) The sale of a service related to the use of portable electronics to a customer by a vendor;

(7) "Supervising entity" means a business entity that is an insurer or insurance producer licensed under the insurance laws of this state; and

(8) “Vendor” means a person that engages in the business of portable electronics transactions.

History. Acts 2011, No. 1018, § 1.

23-88-502. Licensure of vendors.

(a) A vendor is required to hold a limited lines license to sell or offer coverage under a portable electronics insurance policy.

(b) A limited lines license issued under this subchapter shall authorize an employee or authorized representative of the licensee to sell or offer coverage under a policy of portable electronics insurance to a customer at locations the vendor engages in the business of portable electronics transactions.

(c) A supervising entity shall:

(1) Maintain a registry of vendor locations that are authorized to offer coverage for portable electronics in this state; and

(2) Produce the registry for inspection and examination during its regular business hours upon receipt of a ten-day notice from the Insurance Commissioner.

(d) A license issued under this subchapter authorizes the licensee and its employees or authorized representatives to engage in the activities authorized by this subchapter.

History. Acts 2011, No. 1018, § 1; **Amendments.** The 2013 amendment 2013, No. 340, § 1. rewrote (c).

23-88-503. Requirements for sale of portable electronics insurance.

(a) At a location where portable electronics insurance coverage is offered to customers, a prospective customer shall receive written disclosure that states:

(1) Portable electronics insurance may provide duplication of coverage provided by a customer’s homeowner’s insurance policy, renter’s insurance policy, or other source of coverage;

(2) The enrollment by the customer for portable electronics insurance coverage is not required in order to purchase or lease portable electronics devices or services;

(3) The material terms of the insurance coverage, to include:

(A) The identity of the insurer;

(B) The identity of the supervising entity;

(C) The amount of an applicable deductible;

(D) An explanation of the individual that is responsible for the applicable deductible;

(E) Benefits of the coverage; and

(F) Key terms and conditions of coverage, including without limitation whether or not portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

(4) The process for filing a claim, including:

(A) A description of how to return portable electronics; and

(B) The maximum fee if the customer fails to comply with requirements for returning the portable electronics; and

(5)(A) An enrolled customer may cancel a portable electronics insurance policy at any time.

(B) The person paying the premium shall receive a refund of the unearned premium.

(b) A vendor that has been issued a group or master commercial inland marine policy may offer portable electronics insurance on a month-to-month or other periodic basis for its enrolled customers.

(c) Eligibility and underwriting standards for customers to enroll in coverage are to be established by the supervising entity for a portable electronics insurance policy before offering the portable electronics insurance to a customer.

History. Acts 2011, No. 1018, § 1.

23-88-504. Authority of vendors to sell or offer portable electronics insurance.

(a)(1) Employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers without a license as an insurance producer if:

(A) The vendor obtains a limited lines license; and

(B)(i) The insurer issuing the portable electronics insurance supervises or appoints a supervising entity to supervise the insurance coverage policies, including development of a training program for vendors.

(ii) The training program for vendors shall:

(a) Be delivered to employees and authorized representatives of a vendor who are directly engaged in the activity of selling or offering portable electronics insurance; and

(b) Provide basic instruction about the portable electronics insurance offered to customers and the written disclosures required under § 23-88-503.

(iii)(a) The training program for vendors may be provided in an electronic format.

(b) If the training program for vendors is provided in an electronic format, the supervising entity shall implement a supplemental education program regarding the portable electronics insurance coverage that is supervised by licensed employees of the supervising entity.

(2) An employee or authorized representative of a vendor shall not:

(A) Advertise, represent, or otherwise hold himself or herself out as a licensed nonlimited lines insurance producer; or

(B)(i) Be compensated based primarily on the number of customers enrolled for portable electronics insurance coverage.

(ii) An employee or authorized representative of a vendor may receive compensation for activities under a limited lines license that is incidental to his or her overall compensation.

(b)(1)(A) Charges for portable electronics insurance may be billed and collected by the vendor.

(B) A charge that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be itemized separately on the enrolled customer's bill.

(C) If portable electronics insurance is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance is included.

(2)(A) Vendors billing and collecting charges for portable electronics insurance shall not be required to maintain the funds in a segregated account if the vendor:

(i) Is authorized by the insurer to hold the funds in an alternative manner; and

(ii) Remits the amount to the supervising entity within sixty (60) days of receipt by the vendor.

(B) The funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor acting in a fiduciary capacity for the benefit of the insurer.

(C) Vendors may receive compensation from the insurer for billing and collection services authorized under this section.

History. Acts 2011, No. 1018, § 1.

23-88-505. Suspension or revocation of license.

If a vendor, its employee, or its authorized representative violates a provision of this subchapter, the Insurance Commissioner may after notice and a hearing impose on the vendor:

(1) Fines not to exceed five hundred dollars (\$500) per violation or five thousand dollars (\$5,000) in the aggregate; and

(2) Other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this subchapter, including without limitation:

(A) Suspending the privilege of transacting portable electronics insurance at specific business locations where violations have occurred; and

(B) Suspending or revoking the ability of individual employees or authorized representatives of the vendor to act under a license issued under this subchapter.

History. Acts 2011, No. 1018, § 1.

23-88-506. Termination of portable electronics insurance.

(a) Notwithstanding any other law:

(1) An insurer may terminate or otherwise change the terms and conditions of a portable electronics insurance policy only if the policyholder and enrolled customer are provided with at least thirty (30) days' notice; and

(2) If the insurer changes the terms and conditions of a portable electronics insurance policy, the insurer shall provide:

(A) The vendor with a revised policy or endorsement; and

(B) Each enrolled customer with:

(i) A revised certificate, endorsement, updated brochure, or other evidence indicating that a change in the terms and conditions has occurred; and

(ii) A summary of material changes to the portable electronics insurance policy coverage.

(b) Notwithstanding subsection (a) of this section, an insurer may terminate an enrolled customer's coverage under a portable electronics insurance policy on fifteen (15) days' notice if the insurer discovers that fraud or material misrepresentation was used in obtaining coverage or in the presentation of a claim under the portable electronics insurance policy.

(c) Notwithstanding subsection (a) of this section, an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(1) For nonpayment of premium;

(2) If an enrolled customer ceases to have an active service with the vendor; or

(3)(A) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty (30) calendar days after exhaustion of the limit.

(B) If notice to the enrolled customer is not timely sent by the insurer, enrollment and coverage shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(d)(1) If a portable electronics insurance policy is terminated by a policyholder, the policyholder shall mail or deliver written notice to the enrolled customer to advise the enrolled customer of the termination of the portable electronics insurance coverage and the effective date of termination.

(2) The written notice shall be mailed or delivered to the enrolled customer at least thirty (30) days before the termination by the policyholder.

(e)(1) When notice is required under this subchapter, the notice shall be in writing and may be mailed or delivered by registered mail to:

(A) The vendor at the vendor's last known mailing address; and

(B) The vendor's affected enrolled customers' last known mailing addresses on file with the insurer.

(2)(A) If notice is completed through the mail, the person providing notice shall maintain proof of mailing.

(B) An insurer may comply with a notice requirement under this subchapter by providing electronic notice to a vendor or its affected enrolled customers through electronic means.

(C) If notice is completed through electronic means, the insurer shall maintain proof that the notice was sent.

History. Acts 2011, No. 1018, § 1; **Amendments.** The 2013 amendment 2013, No. 340, § 2. rewrote (a)(2).

23-88-507. Application for license and fees.

(a)(1) An application for licensure under this subchapter shall be made to and filed with the Insurance Commissioner on forms prescribed and furnished by the State Insurance Department.

(2) The application for licensure under this subchapter shall:

(A)(i) Provide the name, residence address, and other information required by the commissioner for an employee or authorized representative of the vendor designated by the applicant as the person responsible for the vendor's compliance with the requirements of this subchapter.

(ii) If the vendor derives more than fifty percent (50%) of its revenue from the sale of portable electronics insurance, the information required in subdivision (a)(2)(A)(i) of this section shall be provided for all officers, directors, and shareholders of record that have beneficial ownership of ten percent (10%) or more of any class of securities registered under the federal securities law;

(B)(i) Appoint the commissioner as authorized to receive service on behalf of the applicant for any legal process issued against it in a civil action or proceeding in this state brought in connection with portable electronics insurance coverage and agree that process of the commissioner shall be valid and binding against the applicant.

(ii) The appointment under subdivision (a)(2)(B)(i) of this section shall:

(a) Be irrevocable;

(b) Bind the applicant and any successor in interest as to the assets or liabilities of the applicant; and

(c) Remain in effect as long as the applicant's licensure remains in force in this state; and

(C) Provide the location of the applicant's principal place of business or home office.

(b) Applications for licensure under this subchapter shall be submitted within ninety (90) days of the application forms' being made available by the commissioner.

(c) An initial license issued under this subchapter shall be valid for a period of twenty-four (24) months.

(d)(1) A vendor of portable electronics applying for a limited lines license under this subchapter shall pay to the commissioner:

(A) A nonrefundable application and license fee of one thousand dollars (\$1,000); and

(B) A renewal license fee of five hundred dollars (\$500).

(2) However, a vendor that is engaged in portable electronics transactions at ten (10) or fewer locations in the state applying for a limited lines license under this subchapter shall pay to the commissioner:

(A) A nonrefundable application and license fee not to exceed one hundred dollars (\$100); and

(B) A renewal license fee not to exceed one hundred dollars (\$100).

History. Acts 2011, No. 1018, § 1.

CHAPTER 89

CASUALTY INSURANCE

SUBCHAPTER.

2. AUTOMOBILE LIABILITY INSURANCE GENERALLY.
3. AUTOMOBILE LIABILITY INSURANCE — CANCELLATION AND NONRENEWAL.
4. UNINSURED MOTORIST COVERAGE.
5. AMUSEMENT RIDE AND AMUSEMENT ATTRACTION SAFETY INSURANCE ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

23-89-101. Subrogation of injured person to right of insured.

RESEARCH REFERENCES

ALR. Conduct or inaction by insurer constituting waiver of, or creating estoppel to assert, right of subrogation. 125 A.L.R.5th 1.

CASE NOTES

Direct Cause of Action.

Where plaintiff farmers obtained a judgment against manufacturer for damages to their crop and then sued defendant, the manufacturer's commercial general liability insurer, for indemnity, although this section did not create an additional cause of action for a claimant where the underlying insurance policy was issued and delivered outside Arkan-

sas, the statute did not purport to preclude a claimant from relying upon a right of action created by an express provision in an insurance contract, and the policy provided that a person or organization could sue the insurer to recover on a final judgment against an insured obtained after an actual trial; thus, judgment against the insurer was upheld. *Ferrell v. W. Bend Mut. Ins. Co.*, 393 F.3d 786 (8th Cir. 2005).

SUBCHAPTER 2 — AUTOMOBILE LIABILITY INSURANCE GENERALLY

SECTION.

- 23-89-207. Insurer's right of reimbursement.
- 23-89-211. Total loss settlements.
- 23-89-213. Proof of insurance.
- 23-89-215. Priority of primary motor ve-

SECTION.

- hicle liability insurance coverage.
- 23-89-216. Notice concerning use of insurance proceeds.

A.C.R.C. Notes. References to “this subchapter” in §§ 23-89-201 — 23-89-214 may not apply to §§ 23-89-215 and 23-89-216 which were enacted subsequently.

Effective Dates. Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate

protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 485, § 9: Jan. 1, 2008.

23-89-202. Required first party coverage.

CASE NOTES

ANALYSIS

In General.
Construction.
Benefits.
Liability of Insurer.
Subrogation.

In General.

Because the Arkansas Supreme Court has previously construed § 23-89-205 to allow an insurer to avoid risks caused by the intentional misconduct of the insured and because the General Assembly failed to require no-fault coverage for injuries suffered by innocent third parties in such circumstances, the trial court also erred in ordering the insurer to pay the claimants personal injury protection benefits under Arkansas’ no-fault law. *S. Farm Bureau Cas. Ins. Co. v. Easter*, 374 Ark. 238, 287 S.W.3d 537 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 559 (Oct. 23, 2008).

Construction.

Plain language of § 23-89-207 clearly mandates that an insurer’s right of reimbursement from its insured only arises whenever “no-fault medical benefits have been paid to the insured, pursuant to this section, and” the insured has recovered in tort for injury, either by settlement or judgment. The use of the conjunctive word “and” indicates that these criteria serve as prerequisites before an insurer shall have

a right to reimbursement from its insured. *Progressive Halcyon INS. v. Saldivar*, 2013 Ark. 69, — S.W.3d — (2013).

Benefits.

Insurer did not meet its burden of proving that the amount in controversy exceeded \$75,000 for an insured’s individual claim as required by 28 U.S.C.S. § 1332(a) because before including attorney’s fees, the maximum amount the insured could seek was \$41,754 under this section and §§ 23-89-208 and 23-89-209, and to reach \$75,000, a court would need to award more than \$33,000 in attorney’s fees, which seemed unlikely; however, the undisputed facts showed that the value of the insurance at issue, measured by the amount that the insurer would charge for the coverages at issue, exceeded \$10,000,000, and thus, the amount in controversy for class claims exceeded \$5,000,000, the minimum amount for jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C.S. § 1332(d), and because the insured could not show “to a legal certainty” that the pay-out for the claims of the class would be less than \$5,000,000, her motion to remand was denied. *Toller v. Sagamore Ins. Co.*, 558 F. Supp. 2d 924 (E.D. Ark. 2008).

Trial court did not err in granting an insurer’s motion for summary judgment in an insured’s action to recover benefits under a no-fault medical provision because the exclusion contained in the in-

sured's policy was valid and applied in all scenarios where workers' compensation benefits either had been paid in whole or in part or could be paid in whole or in part; because the insured was covered by workers' compensation, she was excluded from receiving medical-payments coverage under § 23-89-205. *Bohot v. State Farm Mut. Auto. Ins. Co.*, 2012 Ark. 22, — S.W.3d — (2012).

Liability of Insurer.

It was unclear, based on the current record, whether or not a district court could assert jurisdiction under 28 U.S.C.S. § 1332(a) and (d) over a class action suit brought by an insured on her own behalf and on behalf of a class of fellow Arkansas policyholders who owned automobile liability policies issued by an insurance company. Although theoretically the amount that the insurance company would have to pay, if it was required to provide no fault coverage to all of the

class members as required by this section, §§ 23-89-403, 23-89-404, and 23-89-209, would exceed 28 U.S.C.S. § 1332(d) amount in controversy requirements, there was no evidence showing how much the company might actually have to pay, as not every class member would get in an accident or be entitled to no fault benefits. *Toller v. Sagamore Ins. Co.*, 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

Subrogation.

Court erred in granting summary judgment dismissal of the claimant's action, because there was no evidence that the claimant's insurer had a valid lien on the \$5200 paid by the insurance company to the claimant pursuant to the parties' settlement of the claimant's tort claim; there was no evidence that the company had obtained a judicial determination that the claimant had been made whole. *Lopez v. United Auto. Ins. Co.*, 2013 Ark. App. 246, — S.W.3d — (2013).

23-89-203. Rejection of coverage.

CASE NOTES

ANALYSIS

In General.
Signature.

In General.

Trial court did not err in granting an insurer's motion for summary judgment in an insured's action to recover benefits under a no-fault medical provision because the exclusion contained in the insured's policy was valid and applied in all scenarios where workers' compensation benefits either had been paid in whole or in part or could be paid in whole or in part; because the insured was covered by workers' compensation, she was excluded from

receiving medical-payments coverage under § 23-89-205. *Bohot v. State Farm Mut. Auto. Ins. Co.*, 2012 Ark. 22, — S.W.3d — (2012).

Signature.

Insured's wife completed an online application expressly rejecting medical benefits coverage, as under § 25-32-107(c) the record of the wife's electronic signature that memorialized the wife's rejection of coverage qualified as a written rejection of benefits under this section. *Barwick v. Gov't Empl. Ins. Co.*, 2011 Ark. 128, — S.W.3d — (2011).

Cited: *Toller v. Sagamore Ins. Co.*, 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

23-89-205. Exclusion of benefits.**CASE NOTES****ANALYSIS**

Legislative Intent.
Workers' Compensation.

Legislative Intent.

Because the Arkansas Supreme Court has previously construed this section to allow an insurer to avoid risks caused by the intentional misconduct of the insured and because the General Assembly failed to require no-fault coverage for injuries suffered by innocent third parties in such circumstances, the trial court also erred in ordering the insurer to pay the claimants personal injury protection benefits under Arkansas' no-fault law. *S. Farm Bureau Cas. Ins. Co. v. Easter*, 374 Ark. 238, 287 S.W.3d 537 (2008), rehearing denied, —

Ark. —, — S.W.3d —, 2008 Ark. LEXIS 559 (Oct. 23, 2008).

Workers' Compensation.

Trial court did not err in granting an insurer's motion for summary judgment in an insured's action to recover benefits under a no-fault medical provision because the exclusion contained in the insured's policy was valid and applied in all scenarios where workers' compensation benefits either had been paid in whole or in part or could be paid in whole or in part; because the insured was covered by workers' compensation, she was excluded from receiving medical-payments coverage under this section. *Bohot v. State Farm Mut. Auto. Ins. Co.*, 2012 Ark. 22, — S.W.3d — (2012).

23-89-207. Insurer's right of reimbursement.

(a) Whenever a recipient of benefits under § 23-89-202(1) and (2) recovers in tort for injury, either by settlement or judgment, the insurer paying the benefits has a right of reimbursement and credit out of the tort recovery or settlement, less the cost of collection, as defined.

(b) All cost of collection thereof shall be assessed against the insurer and insured in the proportion each benefits from the recovery.

(c) The insurer shall have a lien upon the recovery to the extent of its benefit payments.

(d) The insurer for the party who is liable in damages to the injured party shall not condition settlement or payment of a judgment in favor of the injured party upon issuing a single check jointly to the injured party and the injured party's insurance company.

History. Acts 1973, No. 138, § 6; A.S.A. 1947, § 66-4019; Acts 2005, No. 269, § 1.

RESEARCH REFERENCES

ALR. Conduct or inaction by insurer constituting waiver of, or creating estoppel to assert, right of subrogation. 125 A.L.R.5th 1.

Ark. L. Rev. Comment, Is the Made-

Whole Requirement More than We Bargained For?: From Franklin to Tallant — a Call to Reexamine the Made-Whole Doctrine in Arkansas, 60 Ark. L. Rev. 295.

CASE NOTES

ANALYSIS

Construction.
Right to Subrogation.

Construction.

Plain language of this section clearly mandates that an insurer's right of reimbursement from its insured only arises whenever "no-fault medical benefits have been paid to the insured, pursuant to § 23-89-202, "and" the insured has recovered in tort for injury, either by settlement or judgment. The use of the conjunctive word "and" indicates that these criteria serve as prerequisites before an insurer shall have a right to reimbursement from its insured. *Progressive Halcyon INS. v. Saldivar*, 2013 Ark. 69, — S.W.3d — (2013).

Insurer properly sought general subrogation benefits from a third-party tortfeasor under § 23-79-146. The circuit court erred in its interpretation of this section in conjunction with § 23-79-146. *Progressive Halcyon INS. v. Saldivar*, 2013 Ark. 69, — S.W.3d — (2013).

Right to Subrogation.

Made-whole doctrine, which states that an insurer is not entitled to subrogation unless the insured has been fully made whole, applies to reimbursement claims under this section. *Ryder v. State Farm Mut. Auto. Ins. Co.*, 371 Ark. 508, 268 S.W.3d 298 (2007).

In a car accident case, because the made-whole doctrine, holding that the insurer was not entitled to subrogation unless the insured had been fully made whole, applied and the insurer did not

address whether the insured had been made whole by the settlement with the other driver, it was clear that a genuine question of fact remained as to whether the insured was made whole by the settlement; thus, summary judgment in favor of the insurer was inappropriate. *Ryder v. State Farm Mut. Auto. Ins. Co.*, 371 Ark. 508, 268 S.W.3d 298 (2007).

Right to reimbursement under this section is a right to subrogation vested in the insurer that is established by statute. *Ryder v. State Farm Mut. Auto. Ins. Co.*, 371 Ark. 508, 268 S.W.3d 298 (2007).

Trial court erred in dismissing the insurer's declaratory judgment count, having erred in determining the insurer had a valid lien under this section, that arose at the time the insurer made medical payment to the insured. The subrogation lien could not arise or attach until the insured received the settlement proceeds and there was a judicial determination that she had been made whole. *Riley v. State Farm Mut. Auto. Ins. Co.*, 2011 Ark. 256, 381 S.W.3d 840 (2011), rehearing denied, — S.W.3d —, 2011 Ark. LEXIS 314 (Ark. July 27, 2011).

Court erred in granting summary judgment dismissal of the claimant's action, because there was no evidence that the claimant's insurer had a valid lien on the \$5200 paid by the insurance company to the claimant pursuant to the parties' settlement of the claimant's tort claim; there was no evidence that the company had obtained a judicial determination that the claimant had been made whole. *Lopez v. United Auto. Ins. Co.*, 2013 Ark. App. 246, — S.W.3d — (2013).

23-89-208. Payments.

CASE NOTES

ANALYSIS

Penalty and Attorney's Fees.
Workers' Compensation.

Penalty and Attorney's Fees.

Although the amount that an insured claimed in penalties and attorney's fees under this section could be considered for

purposes of determining whether 28 U.S.C.S. § 1332(a) amount in controversy requirements were met, those amounts alone were not sufficient to give a district court jurisdiction over the insured's class action suit against an insurance company. *Toller v. Sagamore Ins. Co.*, 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

Insurer did not meet its burden of prov-

ing that the amount in controversy exceeded \$75,000 for an insured's individual claim as required by 28 U.S.C.S. § 1332(a) because before including attorney's fees, the maximum amount the insured could seek was \$41,754 under § 23-89-202, this section, and § 23-89-209, and to reach \$75,000, a court would need to award more than \$33,000 in attorney's fees, which seemed unlikely; however, the undisputed facts showed that the value of the insurance at issue, measured by the amount that the insurer would charge for the coverages at issue, exceeded \$10,000,000, and thus, the amount in controversy for class claims exceeded \$5,000,000, the minimum amount for jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C.S. § 1332(d), and because the insured could not show "to a legal certainty" that the pay-out for the

claims of the class would be less than \$5,000,000, her motion to remand was denied. *Toller v. Sagamore Ins. Co.*, 558 F. Supp. 2d 924 (E.D. Ark. 2008).

Workers' Compensation.

Trial court did not err in granting an insurer's motion for summary judgment in an insured's action to recover benefits under a no-fault medical provision because the exclusion contained in the insured's policy was valid and applied in all scenarios where workers' compensation benefits either had been paid in whole or in part or could be paid in whole or in part; because the insured was covered by workers' compensation, she was excluded from receiving medical-payments coverage under § 23-89-205. *Bohot v. State Farm Mut. Auto. Ins. Co.*, 2012 Ark. 22, — S.W.3d — (2012).

23-89-209. Underinsured motorist coverage.

CASE NOTES

ANALYSIS

Construction.
Applicability.
Attorney's Fees.
Compliance.
Coverage.
Duty of Insurer.
Limits of Recovery.
Stacking.

Construction.

Section 23-89-209(a) does not broadly specify any class of persons for coverage other than "the insured." Therefore, a reduction clause in a motor vehicle insurance policy did not violate § 23-89-209(a)(5) where a passenger was not entitled to recover pursuant to an underinsured motorist policy after receiving payment under the liability provision of the same policy. *Nash v. American Nat'l Prop. & Cas. Co.*, 98 Ark. App. 258, 254 S.W.3d 758 (2007).

Insured was not entitled to underinsured-motorist coverage under a personal umbrella liability policy endorsement to an insurance policy issued by the insurer because an obligation to offer uninsured-motorist coverage was a prerequisite to an insurer's obligation to offer underinsured-

motorist coverage under this section, an insurer was not obligated under § 23-89-403(a)(3)(B) to offer uninsured-motorist coverage in conjunction with an umbrella policy, and thus, an insurer issuing an umbrella policy had no obligation to offer underinsured-motorist coverage to its insured. *Econ. Premier Assur. Co. v. Everhart*, 623 F. Supp. 2d 988 (W.D. Ark. 2009).

Applicability.

Trial court's decision to award interest, as well as attorney fees and a penalty, was justified because injured driver had notified her insurer that she had settled with the other driver's insurer and her insurer knew, from the time that she made her demand, that it was liable under injured driver's underinsured motorist policy. *Nationwide Mut. Ins. Co. v. Cumbie*, 92 Ark. App. 448, 215 S.W.3d 694 (2005).

Attorney's Fees.

Trial court did not err in granting an insured's motion for attorney fees pursuant to § 23-79-209 because it could not be reasonably argued that the insurer was not a liability insurance company, inasmuch as it issued the insured's automobile liability insurance policy, and it was the underinsured motorist section of the li-

ability insurance policy that the insurer placed in issue by its counterclaim for a declaratory judgment; casualty insurance is part and parcel of liability insurance, and it is required to be offered to the insured as part of its liability insurance. *S. Farm Bureau Cas. Ins. Co. v. Krouse*, 2010 Ark. App. 493, — S.W.3d — (2010).

Compliance.

Because a motor vehicle insurance policy did not violate this section by excluding from its definition of underinsured motor vehicle any covered motor vehicle, a passenger who was injured in an accident was not entitled to recover under the policy's underinsured motorist coverage. *Humphries v. Nationwide Mut. Ins. Co.*, 97 Ark. App. 125, 245 S.W.3d 156 (2006).

Coverage.

Although subdivision (a)(3) of this section provides that underinsured coverage must provide coverage for damages from the operator of another vehicle, the parties may agree to extend the underinsured coverage to operation of the insured vehicle by an underinsured driver; where policy language is ambiguous, the court will construe the policy liberally in favor of the insured and strictly against the insurer. *Lewis v. Mid-Century Ins. Co.*, 362 Ark. 591, 210 S.W.3d 113 (2005).

Insurer did not meet its burden of proving that the amount in controversy exceeded \$75,000 for an insured's individual claim as required by 28 U.S.C.S. § 1332(a) because before including attorney's fees, the maximum amount the insured could seek was \$41,754 under §§ 23-89-202, 23-89-208, and this section, and to reach \$75,000, a court would need to award more than \$33,000 in attorney's fees, which seemed unlikely; however, the undisputed facts showed that the value of the insurance at issue, measured by the amount that the insurer would charge for the coverages at issue, exceeded \$10,000,000, and thus, the amount in controversy for class claims exceeded \$5,000,000, the minimum amount for jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C.S. § 1332(d), and because the insured could not show "to a legal certainty" that the pay-out for the claims of the class would be less than \$5,000,000, her motion to remand was

denied. *Toller v. Sagamore Ins. Co.*, 558 F. Supp. 2d 924 (E.D. Ark. 2008).

Duty of Insurer.

It was unclear, based on the current record, whether or not a district court could assert jurisdiction under 28 U.S.C.S. § 1332(a) and (d) over a class action suit brought by an insured on her own behalf and on behalf of a class of fellow Arkansas policyholders who owned automobile liability policies issued by an insurance company. Although theoretically the amount that the insurance company would have to pay, if it was required to provide no fault coverage to all of the class members as required by §§ 23-89-202, 23-89-403, 23-89-404, and this section would exceed 28 U.S.C.S. § 1332(d) amount in controversy requirements, there was no evidence showing how much the company might actually have to pay, as not every class member would get in an accident or be entitled to no fault benefits. *Toller v. Sagamore Ins. Co.*, 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

Limits of Recovery.

For purposes of determining whether 28 U.S.C.S. § 1332(a) amount in controversy requirements, a district court ignored medical expenses included in a \$50,000 payment that was tendered by a third party insurer after an insured's complaint against an insurance company was filed, but before the case was removed from a state court. Pursuant to subsection (d) of this section, the insured could not seek to recover payment of those medical expenses from the company. *Toller v. Sagamore Ins. Co.*, 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

Stacking.

Summary judgment in favor of the insurers on the administratrix's action for recovery of underinsured motorist (UIM) benefits was proper as the insurance provisions of the policies issued by the insurers were unambiguously incorporated into the UIM endorsement, did not violate this section, and did not violate public policy; the insurers were allowed to prohibit stacking of benefits. *Couch v. Farmers Ins. Co.*, 375 Ark. 255, 289 S.W.3d 909 (2008).

Cited: *Weigel v. Farmers Ins. Co.*, 356 Ark. 617, 158 S.W.3d 147 (2004).

23-89-211. Total loss settlements.

(a) If an insurer settles a claim for damages to an automobile as a total loss to its own insured or a person having a claim against its insured, the insurer shall include with the payment for the loss:

(1) All applicable taxes, including sales taxes and fees as required under Rule and Regulation 43 of the State Insurance Department; and

(2) An itemized list stating the amount of the claim attributable to the value of the automobile and attributable to the sales tax on an automobile of that value.

(b) When settling a claim against an insured for damages to an automobile as a total loss, the insurer will take into consideration all applicable taxes, license fees, and other fees.

(c) An insurer may not abandon salvage to a towing or storage facility in lieu of payment of towing and storage fees without the consent of the facility and the insured.

(d) The failure of an insurer to comply with the requirements of subsections (a)-(c) of this section shall be considered an unfair claims settlement practice under § 23-66-206(13).

History. Acts 1999, No. 1291, § 1;
2001, No. 1553, § 52; 2003, No. 458, § 1;
2005, No. 2211, § 8.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of with Total Losses, 26 U. Ark. Little Rock L. Rev. 479.
Legislation, 2003 Arkansas General Assembly, Insurance Law, Payment of Taxes

23-89-212. Motor vehicle liability insurance — Extraterritorial provision.**CASE NOTES****Household Exclusion.**

Policy's household exclusion was enforceable in a claim arising from an Oklahoma accident because subsection (b) of this section mandated that a policy had to comply with laws where the insured was driving, and, under Okla. Stat. Tit. 47,

§ 7-601(B)(3), Oklahoma law only required nonresident operators of vehicles registered out of state to comply with the registering state's compulsory liability laws. *Cross v. State Farm Mut. Auto. Ins. Co.*, 2011 Ark. App. 62, — S.W.3d — (2011).

23-89-213. Proof of insurance.

(a) All insurance companies authorized to do business in this state and issuing automobile liability insurance policies in this state shall furnish to the insured a proof-of-insurance card.

(b) The proof-of-insurance card or any temporary proof of insurance issued by the insurance company shall contain the following information:

(1) The name, address, telephone number, and National Association of Insurance Commissioners' code number of the insurer;

(2) The name and telephone number of the local agent through whom the policy was issued, if any, or a blank space where a local agent's name may be stamped or filled in;

(3) The policy number;

(4) The effective date of the insurance policy coverage and the expiration date of the insurance policy coverage;

(5) The vehicle identification number and a brief description of the insured vehicle, except that an insurance card for fleet vehicles is not required to list a separate vehicle identification number for each vehicle in the fleet;

(6) The name and address of the insured person; and

(7) The designation "Excluded Driver(s)" if a person or persons are excluded from coverage under the insurance policy.

(c) At the discretion of the Insurance Commissioner, any person or insurance company that violates this section may be subject to the following penalties:

(1) Suspension or revocation of the person's or insurer's certificate of authority to transact insurance in this state under § 23-63-213; or

(2) A monetary penalty in lieu of revocation or suspension as provided under § 23-63-213.

History. Acts 2001, No. 1828, § 1; substituted "Proof of insurance" for "Premium delinquencies" in the section heading.
2003, No. 998, § 1; 2005, No. 506, § 47;
2007, No. 485, § 1; 2013, No. 355, § 15.

Amendments. The 2013 amendment

23-89-215. Priority of primary motor vehicle liability insurance coverage.

The liability insurance policy covering a motor vehicle is primary when the motor vehicle is driven by:

(1) An insured; or

(2) Any other person:

(A) Not excluded from coverage under the policy;

(B) With the permission of an insured; and

(C) When the use of the motor vehicle is within the scope of the permission granted by an insured.

History. Acts 2007, No. 373, § 1.

may not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to "this subchapter" in §§ 23-89-201 — 23-89-214

23-89-216. Notice concerning use of insurance proceeds.

(a) When making payment to a third party on a claim under a motor vehicle insurance policy for damage to a motor vehicle, a motor vehicle liability insurer shall provide a written notice to the third-party claimant in substantially the following form:

“Failure to use the insurance proceeds in accordance with a security agreement between you and a lienholder, if any, may constitute the criminal offense of defrauding a secured creditor in violation of Arkansas Code § 5-37-203. If you have any questions, contact your lienholder.”

(b) The written notice required by subsection (a) of this section may be provided by including the written notice on each written loss estimate prepared in connection with the claim.

History. Acts 2009, No. 485, § 2; 2009, No. 1452, § 1.

A.C.R.C. Notes. References to “this subchapter” in §§ 23-89-201 — 23-89-214 may not apply to this section which was

enacted subsequently.

Amendments. The 2009 amendment, in the introductory language of (a), inserted “to a third-party” and substituted “third-party claimant” for “insured.”

SUBCHAPTER 3 — AUTOMOBILE LIABILITY INSURANCE — CANCELLATION AND NONRENEWAL

SECTION.

- 23-89-301. Definitions.
- 23-89-304. Time for notice of cancellation.
- 23-89-305. Notice required before re-

newal or nonrenewal —
Inapplicability to commercial policies.

Effective Dates. Acts 2007, No. 127, § 2: Feb. 21, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the law provides no notice of cancellation of a motor vehicle insurance policy to a lienholder that is not a bank or other lending institution; that the liens on motor vehicles of good faith lenders other than banks and lending institutions are in jeopardy of becoming uninsured for lack of notice of cancellation of the owner’s policy; and that the passage of this act is immediately necessary to ensure the ability to

protect motor vehicle liens from losing insurance coverage due to lack of notice of cancellation. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-89-301. Definitions.

- As used in this subchapter:
- (1) “Automobile collision coverage” includes all coverage of loss or damage to an automobile insured under the policy resulting from collision or upset;
 - (2) “Automobile liability coverage” includes only coverage of bodily injury and property damage liability, medical payments, and uninsured motorists coverage;

(3) "Automobile physical damage coverage" includes all coverage of loss or damage to an automobile insured under the policy except loss or damage resulting from collision or upset;

(4) "Nonpayment of premium" means failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;

(5) "Policy" means an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof, delivered or issued for delivery in this state; and

(6)(A) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term.

(B) However, for the purposes of this subchapter:

(i) Any policy with a policy period or term of less than six (6) months shall be considered as if written for a policy period or term of six (6) months; and

(ii) Any policy written for a term longer than one (1) year or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of one (1) year, and the policy may be terminated at the expiration of any annual period upon giving twenty (20) days' notice of cancellation prior to the anniversary date. This cancellation shall not be subject to any other provisions of this subchapter.

History. Acts 1969, No. 333, § 1; A.S.A. 1947, § 66-4007; Acts 2007, No. 826, § 1.

23-89-303. Grounds for cancellation.

CASE NOTES

Cited: S. Farm Bureau Cas. Ins. Co. v. Easter, 374 Ark. 238, 287 S.W.3d 537 (2008).

23-89-304. Time for notice of cancellation.

(a)(1) No notice of cancellation of a policy to which § 23-89-303 applies and no notice of cancellation of a policy which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered shall be effective unless mailed or delivered by the insurer to the named insured.

(2) No notice of cancellation to any named insured shall be effective unless mailed or delivered at least twenty (20) days prior to the effective date of cancellation, provided that, when cancellation is for nonpay-

ment of premium, at least ten (10) days' notice of cancellation accompanied by the reason therefor shall be given.

(b) No notice of cancellation to any person or entity shown on the policy and having a lien on the insured's automobile shall be effective unless mailed or delivered by the insurer:

(1) To the person or entity; and

(2)(A) At least twenty (20) days prior to the termination of the insurance protecting the interest of the person or entity.

(B) However, when cancellation is for nonpayment of premium, at least ten (10) days' notice of cancellation accompanied by the reason for the cancellation shall be given.

(c) Failure to properly notify a named insured or failure to properly notify a person or entity shown on the policy and having a lien on the insured's automobile shall have no effect on a party properly notified.

(d) This section shall not apply to nonrenewals.

History. Acts 1969, No. 333, § 3; 1973, No. 66, § 10; 1975, No. 528, § 1; A.S.A. 1947, § 66-4009; Acts 1989, No. 675, § 1; 2007, No. 127, § 1.

Amendments. The 2007 amendment substituted "person or entity" for "bank or other lending institution" throughout the section; deleted "No notice of cancellation

to any bank or other lending institution shall be effective unless mailed or delivered" at the beginning of (b)(2)(A), and redesignated part of the provisions of (b)(2)(A) as (b)(2)(B); inserted "shown on the policy and having a lien on the insured's automobile" in (c); and made related and stylistic changes.

CASE NOTES

Lending Institution.

Term "lending institution" means an organization that is primarily engaged in the lending business, and if the organization's credit and lending operations, however extensive and regularly carried on, is an incidental function of its main business, then the organization is not a lending institution; thus, summary judgment was properly granted to insurer in a case

where automobile dealer sought to recover under a cancelled motor vehicle policy as the lien holder and loss payee because the notice requirements of this section did not apply since the dealer was not a lending institution where its primary function was not lending (decided prior to the 2007 amendment). *John Gibson Auto Sales v. Direct Ins. Co.*, 97 Ark. App. 192, 245 S.W.3d 700 (2006).

23-89-305. Notice required before renewal or nonrenewal — Inapplicability to commercial policies.

(a)(1) Except as provided in subsection (e) of this section, the insurer shall give either a written notice of nonrenewal or an offer of renewal at least thirty (30) days before the expiration of the policy's existing term.

(2)(A) The insurer shall send the insured a written notice and the insurance producer written or electronic notice of the offer of renewal under subdivision (a)(1) of this section.

(B) The notice required under subdivision (a)(2)(A) of this section shall:

(i) State the new premium for the renewal policy; and

(ii) Provide a description of any change in deductible or policy provisions in the renewal policy.

- (b)(1) This section does not apply in case of nonpayment of premium.
- (2) However, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.
- (c) Unless a statement of the grounds for nonrenewal accompanies or is included in the notice of nonrenewal, the notice of nonrenewal shall state or be accompanied by a statement that the insurer shall specify the grounds for the nonrenewal upon written request of the named insured if the request is mailed or delivered to the insurer not less than fifteen (15) days before the effective date of the nonrenewal.
- (d) Renewal of a policy does not constitute a waiver or estoppel with respect to grounds for cancellation that existed before the effective date of the renewal.
- (e) This section does not apply to the sixty-day notice requirement for the renewal or nonrenewal of a commercial policy governed by § 23-79-307(7).

History. Acts 1969, No. 333, § 4; 1971, No. 187, § 1; A.S.A. 1947, § 66-4010; Acts 2003, No. 1790, § 3; 2009, No. 726, § 46.

Amendments. The 2009 amendment rewrote the section heading; inserted “Ex-

cept as provided in subsection (e) of this section” in (a)(1), inserted (a)(2)(B), and redesignated accordingly; rewrote (c); added (e); and made related and minor stylistic changes.

SUBCHAPTER 4 — UNINSURED MOTORIST COVERAGE

SECTION.
23-89-404. Uninsured motorist property damage coverage.

23-89-403. Bodily injury coverage required.

CASE NOTES

ANALYSIS

Applicability.
Liability of Insurer.
Uninsured Motorist or Vehicle.

Applicability.
This section, which requires a written waiver of coverage, did not apply to insured's claim that summary judgment was improperly granted to insurer based on a named-driver provision where the insured had not provided a written waiver of uninsured motorist coverage resulting from the named-driver exclusion; the statute was modified to require the written waiver only after the insured executed the exclusion. *Castaneda v. Progressive Classic Ins. Co.*, 357 Ark. 345, 166 S.W.3d 556 (2004).

Liability of Insurer.
It was unclear, based on the current record, whether or not a district court could assert jurisdiction under 28 U.S.C.S. § 1332(a) and (d) over a class action suit brought by an insured on her own behalf and on behalf of a class of fellow Arkansas policyholders who owned automobile liability policies issued by an insurance company. Although theoretically the amount that the insurance company would have to pay, if it was required to provide no fault coverage to all of the class members as required by § 23-89-202, this section, §§ 23-89-404, and 23-89-209, would exceed 28 U.S.C.S. § 1332(d) amount in controversy requirements, there was no evidence showing how much the company might actually

have to pay, as not every class member would get in an accident or be entitled to no fault benefits. *Toller v. Sagamore Ins. Co.*, 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

Uninsured Motorist or Vehicle.

Uninsured motorist policy that relieved insured of the burden of proving that another driver was uninsured only in cases where there was actual physical contact does not violate Arkansas public policy because the policy exceeds the requirements of this section; therefore, a trial court erred in granting summary judgment in favor of insured in a case involving insurer's failure to pay uninsured motorist benefits where the insured sustained injuries after running off the road due the negligence of an unidentified driver. *State Farm Mut. Auto. Ins. Co. v. Henderson*, 356 Ark. 335, 150 S.W.3d 276 (2004).

Summary judgment was properly awarded to insurers in a motor vehicle passenger's action to recover uninsured motorist benefits after a car in which the

passenger was riding was involved in an accident where Acts 2003, No. 1043, amending § 27-19-503, did not amend this section. The law under § 27-19-503 remained that a plaintiff had to prove that the other vehicle was uninsured. *Kelley v. USAA Cas. Ins. Co.*, 371 Ark. 344, 266 S.W.3d 734 (2007).

Insured was not entitled to underinsured-motorist coverage under a personal umbrella liability policy endorsement to an insurance policy issued by the insurer because an obligation to offer uninsured-motorist coverage was a prerequisite to an insurer's obligation to offer underinsured-motorist coverage under § 23-89-209, an insurer was not obligated under subdivision (a)(3)(B) of this section to offer uninsured-motorist coverage in conjunction with an umbrella policy, and thus, an insurer issuing an umbrella policy had no obligation to offer underinsured-motorist coverage to its insured. *Econ. Premier Assur. Co. v. Everhart*, 623 F. Supp. 2d 988 (W.D. Ark. 2009).

23-89-404. Uninsured motorist property damage coverage.

(a) Every insured purchasing uninsured motorist bodily injury coverage shall be provided an opportunity to include uninsured motorist property damage coverage, subject to provisions filed with and approved by the Insurance Commissioner, applicable to losses in excess of two hundred dollars (\$200). However, the deductible of two hundred dollars (\$200) shall not apply if:

(1) The vehicle involved in the accident is insured by the same insurer for both collision and uninsured motorist property damage coverage; and

(2) The operator of the other vehicle has been positively identified and is solely at fault.

(b) No insurer shall be required to offer limits of uninsured motorist property damage coverage greater in amount than the property damage liability limits purchased by the insured.

(c)(1) After the uninsured motorist property damage coverage has been made available to an insured one (1) time and has been rejected in writing, it need not again be made available in any continuation, renewal, reinstatement, or replacement of the policy or the transfer of vehicles insured under the policy, unless the insured makes a written request for the coverage.

(2) However, whenever a new application is submitted in connection with any renewal, reinstatement, or replacement transaction, the provisions of this section shall apply in the same manner as when a new policy is being issued.

(d) As used in this section, “property damage” means damage to the insured vehicle, plus a reasonable allowance for loss of use of the vehicle.

History. Acts 1965, No. 464, § 1; 1977, No. 532, § 1; 1983, No. 732, § 1; 1985, No. 713, § 1; A.S.A. 1947, § 66-4003; Acts 2005, No. 1697, § 21.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: “Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance

industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage.”

CASE NOTES

Liability of Insurer.

It was unclear, based on the current record, whether or not a district court could assert jurisdiction under 28 U.S.C.S. § 1332(a) and (d) over a class action suit brought by an insured on her own behalf and on behalf of a class of fellow Arkansas policyholders who owned automobile liability policies issued by an insurance company. Although theoretically the amount that the insurance company would have to pay, if it was required to provide no fault coverage to all of the

class members as required by §§ 23-89-202, 23-89-403, this section, and § 23-89-209, would exceed 28 U.S.C.S. § 1332(d) amount in controversy requirements, there was no evidence showing how much the company might actually have to pay, as not every class member would get in an accident or be entitled to no fault benefits. *Toller v. Sagamore Ins. Co.*, 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

Cited: *Jacobs v. Gulf Ins. Co.*, 85 Ark. App. 435, 156 S.W.3d 737 (2004).

SUBCHAPTER 5 — AMUSEMENT RIDE AND AMUSEMENT ATTRACTION SAFETY INSURANCE ACT

SECTION.

23-89-502. Definitions.

23-89-504. Safety inspection and insurance required — Enforcement — Violations.

SECTION.

23-89-506. Inspections and fees.

23-89-515. Nondestructive testing.

23-89-502. Definitions.

As used in this subchapter:

(1)(A) “Amusement attraction” means any building or structure around, over, and through which persons may be moved by vehicle or mechanically driven device integral to the building or structure, and which provides amusement, pleasure, thrills, or excitement.

(B) “Amusement attraction” does not include theatres, museums, or enterprises principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts;

(2) “Amusement ride” means any mechanical device which carries or conveys passengers along, around, or over a fixed route or course or

within a defined area for the purpose of giving the passengers amusement, pleasure, thrills, or excitement and includes the following:

- (A) Bungee rides or bungee operations which utilize as a component a bungee cord, which is an elastic rope made of rubber, latex, or other elastic-type materials whether natural or synthetic;
 - (B) "Go-kart", which means a ride in which a vehicle is controlled or driven by patrons specifically designed for and run on a fixed course;
 - (C) Inflatable attractions such as "space walks", inflatable slides, or inflatable jousting or boxing rings;
 - (D) Any wave pool, water slide, or other similar attraction that totally or partially immerses a patron in water; and
 - (E) Artificial climbing walls;
- (3) "Department" means the Department of Labor;
 - (4) "Director" means the Director of the Department of Labor;
 - (5) "Nondestructive testing" means the development and application of technical methods, including, but not limited to, radiographic, magnetic particle, ultrasonic, liquid penetrant, electromagnetic, neutron radiographic, acoustic emission, visual, and leak testing to examine materials or components in ways that do not impair their future usefulness and serviceability in order to:
 - (A) Detect, locate, measure, and evaluate discontinuities, defects, and other imperfections;
 - (B) Assess integrity, properties, and composition; and
 - (C) Measure geometrical characters; and
 - (6) "Owner" means any person who owns an amusement ride or attraction or in the event that the amusement ride or attraction is leased, the lessee.

History. Acts 1983, No. 837, § 2; A.S.A. 1947, § 66-5902; Acts 1995, No. 631, § 1; 2001, No. 1365, § 1; 2005, No. 924, § 1.

23-89-504. Safety inspection and insurance required — Enforcement — Violations.

(a) It is unlawful for any person or entity to operate an amusement attraction or amusement ride unless the person or entity maintains liability insurance in the minimum amount required by this subchapter at all times during the operation of the amusement attraction or ride in the state and unless the person has a current safety inspection report made at the time of set-up of the attraction or ride, but before use by the public.

(b)(1) The Director of the Department of Labor may conduct examinations and investigations into the affairs of any person or entity subject to the provisions of this subchapter for the purpose of determining compliance with the provisions of this subchapter.

(2) The Director of the Department of Labor shall administer and enforce the provisions of this subchapter.

(3) The Director of the Department of Labor shall promulgate regulations for the proper administration and enforcement of this subchapter, including regulations establishing minimum safety requirements for the operation and maintenance of amusement rides and attractions.

(4) The Director of the Department of Labor shall employ amusement ride inspectors certified by the National Association of Amusement Ride Safety Officials.

(c) If the Director of the Department of Labor finds that an operator or owner has failed to comply with the provisions of this subchapter, he or she may order the operator or owner to immediately cease operating the amusement attraction or ride and may impose upon the operator or owner an administrative penalty of not more than ten thousand dollars (\$10,000).

(d)(1) If the Director of the Department of Labor finds that an operator or owner failed to comply with the provisions of this subchapter, he or she shall so inform the prosecuting attorney in whose district any purported violation may have occurred.

(2)(A) Upon conviction, the operator or owner shall be guilty of a Class A misdemeanor.

(B) Upon conviction of a knowing violation, the operator or owner shall be guilty of a Class D felony.

(3) Each day of violation shall constitute a separate offense.

(e) The Director of the Department of Labor shall have authority to bring a civil action in any court of competent jurisdiction, without payment of costs or giving bond for costs, to recover any administrative penalty imposed pursuant to this subchapter or to recover any delinquent fees owed pursuant to this subchapter.

(f) The Director of the Department of Labor and his or her deputies, assistants, examiners, and employees and the Director of the Department of Arkansas State Police and his or her deputies, officers, assistants, and employees and any public law enforcement officer shall not be liable for any damages occurring as a result of the implementation of this subchapter.

History. Acts 1983, No. 837, § 8; A.S.A. 1995, No. 631, § 2; 2001, No. 1365, § 2; 1947, § 66-5908; Acts 1987, No. 839, § 4; 2005, No. 1994, § 458.

23-89-506. Inspections and fees.

(a)(1) The Director of the Department of Labor is authorized to inspect each person or entity to ensure compliance with this subchapter.

(2) Two (2) times per calendar year, the director shall inspect all permanently placed operational amusement rides or attractions located in this state being operated for profit or charity.

(3) All portable amusement rides or attractions shall be inspected by the director every time they are moved to a new location in Arkansas

and before they are permitted to commence operation or open to the public.

(4)(A) Inflatable attractions, self-contained mobile playgrounds, artificial climbing walls, and other patron-propelled amusement rides or attractions shall be inspected every six (6) months, unless a more frequent schedule of inspections is established by regulation of the director for certain types of inflatable attractions and self-contained mobile playgrounds.

(B) Self-contained mobile playgrounds, artificial climbing walls, and other patron-propelled amusement rides or attractions shall be inspected pursuant to subdivision (a)(4)(A) of this section only if such playgrounds contain no mechanical or electrical parts, structures, or additions such as blowers or lights.

(C) The director may determine by rule which other portable amusement ride or amusement attraction is sufficiently safe to justify inspection only one (1) time each six (6) months.

(b) The director is authorized to make an inspection on an emergency basis when notification pursuant to this subchapter is made less than four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the date of the operation of the facility, if he or she determines that the owner or operator could not have reasonably known of the proposed operation prior to the four-day period and that the owner or operator meets all other requirements for operation in this state.

(c) If the director or an authorized employee of the department finds that any amusement ride or attraction is defective in a manner affecting patron safety or unsafe, he or she shall attach to the amusement ride or attraction a notice and order prohibiting its use or operation. Operation of the amusement ride shall not resume until the unsafe or hazardous condition is corrected and the director or his or her authorized representative permits such an operation.

(d) Any inspector certified pursuant to the requirements of this subchapter who, upon inspection of an amusement ride or attraction, finds the ride or attraction to be defective or unsafe shall immediately report the ride or attraction and its condition to the Department of Labor.

(e) The director shall charge a fee to be paid by the owner of any amusement ride or amusement attraction for all amusement ride safety inspections performed by any employee of the department. Such fees shall be as follows:

(1) For one (1) to five (5) rides or attractions, one hundred dollars (\$100);

(2) For six (6) to fifteen (15) rides or attractions, two hundred dollars (\$200);

(3) For sixteen (16) to twenty-five (25) rides or attractions, three hundred dollars (\$300);

(4) For twenty-six (26) to thirty-five (35) rides or attractions, four hundred dollars (\$400); and

(5) For thirty-six (36) and more rides or attractions, six hundred dollars (\$600).

(f) The director is authorized by regulation to implement an inspection fee waiver program for the benefit of a county fair association, provided that:

(1) The county's population is under fifteen thousand (15,000) based on United States Bureau of the Census estimates as of July 1, 1999; and

(2) The county fair association can demonstrate that it would be unable to obtain a carnival for its county fair without such a waiver.

History. Acts 1983, No. 837, § 6; A.S.A. 1947, § 66-5906; Acts 1987, No. 839, § 3; 1995, No. 631, § 4; 2001, No. 1365, § 4; 2005, No. 924, § 2; 2013, No. 540, § 1.

Amendments. The 2013 amendment added (a)(4)(C).

23-89-515. Nondestructive testing.

(a) An owner may not operate an amusement ride for which the manufacturer recommends nondestructive testing, unless the owner complies with the manufacturer's standards for the testing and the ride meets the manufacturer's acceptance criteria.

(b)(1) If manufacturer's nondestructive testing standards are unavailable for an amusement ride and the Department of Labor deems it necessary, the owner shall provide the standards through a professional engineer as defined in § 17-30-101, an engineering agency, or an individual qualified by training and experience to compile standards based on the ride's specifications and history and using accepted engineering practices.

(2) The professional engineer or other qualified individual shall be approved by the Director of the Department of Labor.

(3) The amusement ride shall meet the criteria established under this subsection.

History. Acts 2001, No. 1365, § 11; Acts 2011, No. 897, § 17.

Amendments. The 2011 amendment substituted "a professional engineer as defined in § 17-30-101" for "a registered

professional engineer" in (b)(1); inserted "professional" in (b)(2); and substituted "established under this subsection" for "so established" in (b)(3).

CHAPTER 91

PREPAID LEGAL INSURANCE

SUBCHAPTER.

2. ARKANSAS LEGAL INSURANCE ACT.

3. LONG-TERM CARE LIABILITY INSURANCE. [REPEALED.]

SUBCHAPTER 2 — ARKANSAS LEGAL INSURANCE ACT

SECTION.

23-91-221. Professional ethics.

23-91-221. Professional ethics.

The Insurance Commissioner shall report to the Attorney General for reference to the Supreme Court any information which the commissioner considers to be of substance and of possible violation of the Model Rules of Professional Conduct as adopted by the Supreme Court.

History. Acts 1977, No. 368, § 14;
A.S.A. 1947, § 66-5414; Acts 2005, No.
1962, § 110.

SUBCHAPTER 3 — LONG-TERM CARE LIABILITY INSURANCE

SECTION.

23-91-301 — 23-91-309. [Repealed.]

23-91-301 — 23-91-309. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2009, No. 1484, § 8. The subchapter was derived from the following sources:

23-91-301. Acts 2001, No. 1825, § 1.
23-91-302. Acts 2001, No. 1825, § 1.
23-91-303. Acts 2001, No. 1825, § 1.

23-91-304. Acts 2001, No. 1825, § 1.
23-91-305. Acts 2001, No. 1825, § 1.
23-91-306. Acts 2001, No. 1825, § 1.
23-91-307. Acts 2001, No. 1825, § 1.
23-91-308. Acts 2001, No. 1825, § 1.
23-91-309. Acts 2001, No. 1825, § 1.

CHAPTER 92**MULTIPLE EMPLOYER TRUSTS AND SELF-INSURED PLANS**

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. THIRD PARTY ADMINISTRATORS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-92-101. Registration or licensure required.

23-92-101. Registration or licensure required.

(a) "Multiple employer welfare arrangement" has the same meaning as under 29 U.S.C. § 1002(40), as it existed on January 1, 2003.

(b)(1) Every fully insured multiple employer trust and fully insured multiple employer welfare arrangement that intends to provide benefits to citizens of this state shall register with the Insurance Commissioner prior to soliciting or enrolling members or prior to conducting any other business activity in Arkansas.

(2)(A) Each fully insured multiple employer trust and fully insured multiple employer welfare arrangement under this section that is

conducting any business activity in Arkansas as of March 18, 2003, shall register with the commissioner no later than July 1, 2003.

(B) After the initial registration, each fully insured multiple employer trust and fully insured multiple employer welfare arrangement under this section that conducts business in Arkansas shall thereafter register with the commissioner no later than January 1 of each year for as long as it continues to do business in Arkansas.

(c)(1) A multiple employer trust or multiple employer welfare arrangement that is not fully insured must obtain a certificate of authority under regulations promulgated by the commissioner before doing business in Arkansas.

(2) In order to remain licensed, a multiple employer trust or multiple employer welfare arrangement that is not fully insured must comply with all Arkansas laws that are not inconsistent with the Employee Retirement Income Security Act of 1974, as it existed on January 1, 2003.

(3)(A) The commissioner shall adopt rules regulating multiple employer trusts and multiple employer welfare arrangements that are not fully insured.

(B) The rules shall include information and procedures concerning:

(i) The criteria and application for obtaining a certificate of authority from the State Insurance Department to conduct business in Arkansas;

(ii) The benefits to be offered;

(iii) Financial requirements;

(iv) Fees;

(v) Insolvency procedures;

(vi) Examinations;

(vii) Filing of forms and rates;

(viii) Written disclosures and other consumer protections;

(ix) Reporting requirements;

(x) Excess or stop loss insurance; and

(xi) Other factors the commissioner deems necessary for the effective regulation of multiple employer welfare trusts and multiple employer welfare arrangements that are not fully insured.

History. Acts 1985, No. 795, §§ 1, 2; A.S.A. 1947, §§ 66-6001, 66-6002; Acts 2001, No. 1603, § 44; 2003, No. 516, § 6; 2005, No. 1697, § 22.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance

industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

SUBCHAPTER 2 — THIRD PARTY ADMINISTRATORS

SECTION.

23-92-201. Definition.

23-92-201. Definition.

As used in this subchapter, “third party administrator” means any person, firm, or partnership that collects or charges premiums from or adjusts or settles claims on residents of this state in connection with life or accident and health coverage provided by a self-insured plan or a multiple employer trust or multiple employer welfare arrangement. “Third party administrator” includes administrative-services-only contracts offered by insurers and health maintenance organizations but does not include the following persons:

- (1) An employer, for its employees or for the employees of a subsidiary or affiliated corporation of the employer;
- (2) A union, for its members;
- (3) An insurer or health maintenance organization licensed to do business in this state;
- (4) A creditor, for its debtors, regarding insurance covering a debt between them;
- (5) A credit card-issuing company that advances for or collects premiums or charges from its credit card holders as long as that company does not adjust or settle claims;
- (6) An individual who adjusts or settles claims in the normal course of his or her practice or employment and who does not collect charges or premiums in connection with life or accident and health coverage; or
- (7) An agency licensed by the Insurance Commissioner and performing duties pursuant to an agency contract with an insurer authorized to do business in this state.

History. Acts 1985, No. 796, § 1; A.S.A. 1947, § 66-6003; Acts 2001, No. 1603, § 45; 2005, No. 1697, § 23.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: “Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance

industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage.”

SUBCHAPTER 4 — ARKANSAS PROFESSIONAL EMPLOYER ORGANIZATION RECOGNITION AND LICENSING ACT

23-92-409. Relationships defined.

CASE NOTES

Requirements.

In a workers' compensation matter, an agreement signed by the employee providing coverage through the Ohio state-administered fund did not satisfy the requirement of subdivision (c)(4)(A) of this section and was therefore void as in violation of the Arkansas Insurance Code; the

co-employers were responsible for filing a plan allocating the responsibility for obtaining workers' compensation coverage from a carrier licensed to do business in Arkansas. *Williams v. Johnson Custom Homes*, 374 Ark. 457, 288 S.W.3d 607 (2008).

CHAPTER 93

CONTINUING CARE PROVIDERS

SUBCHAPTER.

1. CONTINUING CARE PROVIDER REGULATION ACT.
2. LICENSING.

SUBCHAPTER 1 — CONTINUING CARE PROVIDER REGULATION ACT

SECTION.

- 23-93-103. Definitions.
23-93-111. Liquid refund reserve requirement.

23-93-103. Definitions.

As used in this subchapter:

- (1) "Commissioner" means the Insurance Commissioner;
- (2)(A) "Continuing care" means the furnishing of independent living units to individuals and:

(i) Furnishing nursing care or personal care services under an agreement, whether the nursing care or personal care services are provided in the facility or in another setting designated by the agreement for providing continuing care to individuals; and

(ii)(a) Requiring the payment of an entrance fee by an individual not related by consanguinity or affinity to the provider furnishing the living unit.

(b) Payment may be made by an entrance fee alone, an entrance fee and periodic payments, or by payment of less fees for service.

(B) Agreements to provide continuing care shall include agreements to provide care for any duration, including agreements that are terminable by either party;

(3) "Department" means the State Insurance Department;

(4) "Entrance fee" means an initial or deferred transfer to a provider of a sum of money or other property made or promised to be made as full

or partial consideration for acceptance of a specified individual as a resident in a facility which exceeds six (6) months' rental of the living unit. An accommodation fee, admission fee, or other fee of similar form and application shall be considered to be an entrance fee;

(5) "Facility" means a place which provides continuing care;

(6) "Living unit" means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one (1) or more identified individuals;

(7)(A) "Nursing care" means those services pertaining to the curative, restorative, and preventive aspects of nursing services that are performed by or under the supervision of a registered or licensed nurse.

(B) "Nursing care" does not include general health service such as nutritional counseling, exercise programs, or other preventive medicine techniques;

(8)(A) "Personal care services" means assistance with meals, dressing, movement, bathing, or other personal needs of maintenance or other direct supervision and oversight of the physical and mental well-being of a person.

(B) "Personal care services" does not include general health services such as nutritional counseling, exercise programs, or other preventive medicine techniques;

(9) "Provider" means the owner or operator, whether a natural person, partnership, or other incorporated association, trust, or corporation whose owner or operator undertakes to provide continuing care for a fee, whether fixed or variable, for the period of care. The fee may be payable in lump sum, in lump sum and monthly maintenance charges, or in installments;

(10) "Refund reserve" means the actuarially determined annual refund amount required to be maintained by a continuing care provider for service of its refund amounts during the next fiscal year of the facility;

(11) "Resident" means an individual entitled to receive continuing care in a facility; and

(12) "Solicit" means all actions of a provider in seeking to have individuals residing in this state pay an application fee and enter into a continuing care agreement by any means, such as, but not limited to, personal, telephone, or mail communication or any other communication directed to and received by any individual in this state and any advertisements in any media distributed or communicated by any means to individuals in this state.

History. Acts 1987, No. 329, § 3; 1991, No. 1123, § 16; 2001, No. 1553, § 53; 2009, No. 726, § 47.

A.C.R.C. Notes. The amendment of this section by Acts 2009, No. 726, § 47,

substituted "payment of less fees for service" for "payment of fees for services" at the end of (2)(A)(ii)(b) without marking up the language to indicate the changes.

Amendments. The 2009 amendment

substituted “and” for “or” at the end of (2)(A)(i), subdivided (2)(A)(ii), and made related and minor stylistic changes.

23-93-111. Liquid refund reserve requirement.

(a)(1) Each provider shall establish and maintain liquid refund reserves in an amount determined in accordance with this section.

(2)(A) The refund reserve shall be equal to or shall exceed the actuarially determined annual refund amount as of the financial reporting date.

(B) The actuarially determined annual refund amount shall be calculated upon both the actual experience of the facility and published industry norms.

(C) The method which yields the greater sum shall determine the actuarially determined annual refund amount for the purposes of this section and § 23-93-106(a)(8).

(b) The provider may satisfy the liquid reserve requirement by:

(1) Holding the reserve amount in an escrow account with a federally insured financial institution or institutions located and doing business in this state;

(2) Purchasing a certificate of deposit from an Arkansas lending institution;

(3) Investing in bonds, notes, warrants, and other evidences of indebtedness which are direct obligations of the United States of America held in the provider's name and held by the provider within the State of Arkansas;

(4) Having the unqualified guaranty of an affiliated organization or individual, as evidenced by a written agreement, whose net worth as reported in its most recent financial statement audited by a certified public accountant and certified by the provider and filed with the State Insurance Department, which is equal to five (5) times the reserve amount or portion of the reserve amount to be satisfied by this method; or

(5) Any combination of the foregoing.

(c) When requested by the Insurance Commissioner, the provider shall furnish all of the information relating to the amount of the reserve and the method used to maintain the reserve amount.

History. Acts 1987, No. 329, § 8; 1989, No. 203, § 3. ing set out to reflect grammatical revisions to (b)(1) through (3).

Publisher's Notes. This section is be-

SUBCHAPTER 2 — LICENSING

SECTION.

23-93-207. Application.

23-93-207. Application.

The application for a license shall contain the following documents and information:

(1)(A) An appointment of an Arkansas resident to serve as the registered agent for the provider shall be filed with the State Insurance Department. Thereafter, the registered agent shall be authorized to receive service of any lawful process in any proceeding arising under this subchapter against the provider or his or her agents.

(B) On and after January 1, 2003, all licensed life care providers shall file with the Insurance Commissioner a designation of an Arkansas resident as an agent for service of legal process, and the commissioner shall maintain a listing in conformity with § 23-63-301 et seq.;

(2) The states or other jurisdictions, including the federal government, in which an application for certification or similar documents for the subject facility have been or will be filed and any order, judgment, or decree entered in connection therewith by the regulatory authorities in each of the jurisdictions or by any court or administrative body thereof;

(3) The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent (10%) or greater equity or beneficial interest in the provider and a description of that person's interest in or occupation with the provider;

(4)(A) Copies of:

(i) The articles of incorporation, with all amendments thereto, if the provider is a corporation;

(ii) All instruments by which the trust is created or declared, if the provider is a trust; and

(iii) The articles of partnership or association and all other organization papers, if the provider is organized under another form.

(B) In the event the provider is not the legal title holder to the property upon which the facility is or is to be constructed, the documents listed in subdivision (4)(A) of this section shall be submitted for both the provider and the legal title holder;

(5)(A) A legal description by metes and bounds or other acceptable means of the lands to be certified and the relationship of such lands to existing streets, roads, and other improvements, together with a map showing the proposed or actual facility and the dimensions of the living units as available, except for living units that are completed and available for inspection.

(B) The map shall be drawn to scale, signed, and sealed by a professional engineer as defined in § 17-30-101 or a professional surveyor as defined in § 17-48-101;

(6) Copies of the deed or other instrument establishing title of the provider and a title search, title report, or title certificate, or a binder or policy issued by a licensed title insurance company;

(7) A statement concerning any litigation, orders, judgments, or decrees which might affect the offering;

(8) A statement that the life care agreements will be offered to the public and entered into without regard to marital status, sex, race, creed, or national origin or, if not, any legally permissible restrictions on purchase that will apply;

(9) A statement of the present conditions of physical access to the facility and the existence of any material adverse conditions that affect the facility that are known, should be known, or are readily ascertainable;

(10) Copies of all contracts and agreements which the resident may be required to execute;

(11) In the event there is or will be a blanket encumbrance affecting the facility or a portion thereof, a copy of the document creating it and a statement of the consequences upon a resident of a failure of the person bound to fulfill the obligations under which the instrument and the manner in which the interest of the resident is to be protected in the event of such an eventuality;

(12) One (1) copy of the proposed disclosure statement required under § 23-93-106;

(13) A current financial statement of the provider and any related predecessor, parent, or subsidiary company, including, but not limited to, a current profit and loss statement and balance sheet audited by an independent public accountant;

(14) A statement concerning any adjudication of bankruptcy during the last five (5) years against the provider, its predecessor, parent, or subsidiary company, and any principal owning more than ten percent (10%) of the interests in the facility at the time of the filing of the application for certification. This requirement shall not extend to limited partners or those whose interests are solely those of investors;

(15) Copies of all easements and restrictions, whether of record or not;

(16) A statement as to the status of compliance with all the requirements of all laws, ordinances, and regulations of governmental agencies having jurisdiction over the construction, permitting, and licensing of the facility, together with copies of all necessary federal, state, county, and municipal approvals;

(17) A statement that neither the provider nor any of its officers or principals have ever been convicted of a crime in this state or a foreign jurisdiction and that the provider has never been subject to any permanent injunction or final administrative order restraining a false or misleading promotional plan involving continuing care facility disposition or, if so, copies of all pleadings and orders in regard thereto;

(18) A projected annual budget for the facility for the next five (5) years or such lesser time as the department allows;

(19) Copies of market studies, if any, prepared on behalf of the provider concerning the feasibility of the project;

(20) An affidavit signed by the provider that the contents of the application are true and accurate and made in good faith; and

(21) Such other additional information as the department may require in individual cases after review of an application for certification to assure full and fair disclosure.

History. Acts 1993, No. 787, § 6; 2001, No. 1604, § 118; 2005, No. 1178, § 16; 2011, No. 897, § 18; 2011, No. 898, § 8.

Amendments. The 2011 amendment by No. 897 substituted “a professional engineer as defined in § 17-30-101 or a professional surveyor as defined in § 17-48-101” for “a licensed professional engineer or professional surveyor” in (5)(B).

The 2011 amendment by No. 898 substituted “a licensed professional engineer as defined in § 17-30-101 or a professional surveyor as defined in § 17-48-101” for “a licensed professional engineer or professional surveyor” in (5)(B).

CHAPTER 95

RISK-SHARING PLANS FOR PROPERTY AND CASUALTY INSURANCE

SECTION.

23-95-104. Plan for coverage — Requirement.

23-95-104. Plan for coverage — Requirement.

(a)(1) If the Insurance Commissioner finds after a hearing that in all or in any part of this state, any amount or kind of insurance authorized by §§ 23-62-104 and 23-62-105 is not reasonably available in the voluntary market and that the public interest requires the availability of that insurance, the commissioner shall direct insurers doing business within this state to prepare a voluntary plan which will provide that insurance coverage.

(2) The plan shall be submitted to the commissioner within the time he or she designates and, if approved by him or her, may be put into operation.

(3) If the plan is not approved by the commissioner or if the plan is not submitted as required, the commissioner may promulgate a plan to provide insurance coverage for any risks in this state which, based on reasonable underwriting standards, are entitled to obtain coverage, but are otherwise unable to obtain coverage in the voluntary market.

(b) All orders of the commissioner finding that a line of insurance is not reasonably available in the voluntary market shall consider, to the extent practicable, historical data from the past five (5) years regarding:

- (1) Market availability;
- (2) Major trends in policy forms, limits, and deductibles offered;
- (3) Filed rates for the line if available;
- (4) Loss ratios, claims severity, and claims frequency on both the state and national levels;
- (5) Availability of surplus lines coverage;
- (6) The types of insurers offering the line of insurance in the state;

- (7) The existence of any residual market programs, market assistance programs, and captive insurance; and
- (8) Whether alternatives to the creation of a risk-sharing plan are feasible.
- (c) The commissioner may require licensed insurers and surplus lines companies to report historical data to assist the consideration of the factors contained in subsection (b) of this section.
- (d) The commissioner shall afford any interested party an opportunity to submit written or oral testimony to assist in the determination required by subsection (a) of this section.
- (e) The commissioner shall report to the Legislative Council all lines of insurance that he or she determines are not reasonably available in the voluntary market.

History. Acts 1987, No. 896, § 2; 2005, No. 1697, § 24.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: “Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage.”

CHAPTER 96

ARKANSAS LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION ACT

SECTION.	SECTION.
23-96-104. Definitions.	23-96-114. Liability for benefits — Assignment or subrogation of rights.
23-96-106. Scope of chapter.	
23-96-107. Coverage.	
23-96-110. Powers and duties of association.	

23-96-104. Definitions.

- As used in this chapter:
- A. “Account” means any of the two (2) accounts created under § 23-96-109.
- B. “Association” means the Arkansas Life and Health Insurance Guaranty Association created under § 23-96-109.
- C. “Authorized assessment” or the term “authorized” when used in the context of assessments means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.

D. "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.

E. "Called assessment" or the term "called" when used in the context of assessments means that a notice has been issued by the Association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the Association to member insurers.

F. "Commissioner" means the Insurance Commissioner of this state.

G. "Contractual obligations" means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under § 23-96-107.

H. "Covered policy" or "covered contract" means any policy or contract or portion of a policy or contract for which coverage is provided under § 23-96-107.

I. "Extra-contractual claims" shall include, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorney's fees and costs.

J. "Impaired insurer" means a member insurer which, after March 9, 1989, is not an insolvent insurer and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

K. "Insolvent insurer" means a member insurer which, after March 9, 1989, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

L. "Member insurer" means any insurer licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under § 23-96-107, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

(1) A hospital or medical service organization, whether profit or nonprofit;

(2) A health maintenance organization;

(3) A fraternal benefit society;

(4) A mandatory state pooling plan;

(5) A burial association;

(6) An insurance exchange;

(7) Prepaid funeral trusts;

(8) An organization which has a certificate or license limited to the issuance of charitable gift annuities; or

(9) Any entity similar to any of the above.

M. "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

N. "Owner" of a policy or contract and "policy owner" and "contract owner" means the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in

accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms "owner", "contract owner", and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.

O.(1) "Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

(2) It is the intent of the General Assembly that "person" shall include a claimant or beneficiary who is receiving annuity benefits as provided in §§ 11-9-210 and 23-96-114(B) and (F).

P. "Plan sponsor" means:

(1) The employer in the case of a benefit plan established or maintained by a single employer;

(2) The employee organization in the case of a benefit plan established or maintained by an employee organization; or

(3) In a case of a benefit plan established or maintained by two (2) or more employers or jointly by one (1) or more employers and one (1) or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

Q.(1) "Premiums" means amounts or considerations (by whatever name called) received on covered policies or contracts less returned premiums, considerations, and deposits and less dividends and experience credits.

(2)(a) "Premiums" does not include amounts or considerations received for any policies or contracts or for the portions of policies or contracts for which coverage is not provided under § 23-96-106, except that assessable premium shall not be reduced on account of § 23-96-106(A)(3), relating to interest limitations and § 23-96-114(A)(2), relating to limitations with respect to one (1) individual, one (1) participant, and one (1) contract owner.

(b) Provided, "premiums" shall not include:

(i) Any premiums in excess of one million dollars (\$1,000,000) on an unallocated annuity contract not issued under a governmental retirement benefit plan (or its trustee) established under sections 401(k), 403(b), or 457 of the United States Internal Revenue Code; or

(ii) With respect to multiple non-group policies of life insurance owned by one (1) owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of one million dollars (\$1,000,000) with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

R.(1) "Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the Association in its reasonable judgment by considering the following factors:

(a) The state in which the primary executive and administrative headquarters of the entity is located;

(b) The state in which the principal office of the chief executive officer of the entity is located;

(c) The state in which the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings;

(d) The state in which the executive or management committee of the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings;

(e) The state from which the management of the overall operations of the entity is directed; and

(f) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors. However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

(2) The principal place of business of a plan sponsor of a benefit plan described in paragraph (P)(3) of this section shall be deemed to be the principal place of business of the association, committee, joint board of trustees or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

S. "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.

T. "Resident" means a person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer. A person may be a resident of only one (1) state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either (i) residents of foreign countries, or (ii) residents of United States possessions, territories, or protectorates that do not have an association similar to the Association created by this chapter shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.

U. "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

V. "State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.

W. "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, an accident and health, or an annuity policy or contract.

X.(1) "Unallocated annuity contract" means an annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

(2) It is the intent of the General Assembly that an annuity contract as provided for in § 11-9-210, shall not be an "unallocated annuity contract".

History. Acts 1989, No. 444, § 5; 1991, No. 651, § 2; 1997, No. 950, § 1; 2001, No. 1603, §§ 48, 49; 2001, No. 1604, § 119; 2013, No. 456, § 1.

Amendments. The 2013 amendment deleted "whichever occurs first" at the end of the first sentence in (T).

23-96-106. Scope of chapter.

A. This chapter shall not provide coverage for:

(1) A portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract owner;

(2) A portion of a policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(3) A policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(a) Averaged over the period of four (4) years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four (4) years before the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; and

(b) On and after the date on which the Association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's Corporate Bond Yield Average as most recently available;

(4) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, accident and health, or annuity benefits to its employees, members, or others to the extent that such plan or program is self-funded or uninsured, including but not limited to, benefits payable by an employer, association, or other person under:

(a) A multiple employer welfare arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(b) A minimum premium group insurance plan;

- (c) A stop-loss group insurance plan; or
- (d) An administrative services only contract;
- (5) A portion of a policy or contract to the extent that it provides for dividends or experience rating credits, voting rights, or payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of such policy or contract;
- (6) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;
- (7) An unallocated annuity contract issued to or in connection with a benefit plan protected under the Pension Benefit Guaranty Corporation regardless of whether the Pension Benefit Guaranty Corporation has yet become liable to make any payments with respect to the benefit plan;
- (8) A portion of an unallocated annuity contract that is not owned by a benefit plan (directly or in trust) or a government lottery or issued to a collective investment trust or similar pooled fund offered by a bank or other financial institution;
- (9) Any policy or contract written on the mutual assessment plan or stipulated premium plan prior to January 1, 1968, for which no statutory legal reserves are required;
- (10) A portion of a policy or contract to the extent that the assessments required by § 23-96-115 with respect to the policy or contract are preempted by federal or state law;
- (11) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including without limitation:
 - (a) Claims based on marketing materials;
 - (b) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;
 - (c) Misrepresentations of or regarding policy benefits;
 - (d) Extra-contractual claims; or
 - (e) A claim for penalties or consequential or incidental damages;
- (12) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustees, which in each case is not an affiliate of the member insurer;
- (13) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for

purposes of determining the values that have been credited and are not subject to forfeiture under this paragraph (A)(13), the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture; and

(14) A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Part C or Part D of 42 U.S.C. §§ 1395 — 1395kkk-1, commonly known as Medicare Part C and D, or any regulations issued pursuant thereto.

B. The protection provided by this chapter shall not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

History. Acts 1989, No. 444, §§ 3, 8; 1997, No. 950, § 1; 2001, No. 1603, § 52; 2001, No. 1604, § 120; 2013, No. 456, § 2.

Amendments. The 2013 amendment added (A)(13) and (A)(14).

23-96-107. Coverage.

A. This chapter shall provide coverage for the policies and contracts specified in subsection (B) of this section to:

(1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under paragraph (2) of this subsection;

(2) Persons who are owners of or certificate holders under such policies or contracts (other than unallocated annuity contracts and structured settlement annuities) and in each case who:

(a) Are residents; or

(b) Are not residents, but only under all of the following conditions:

(i) The insurer that issued the policies or contracts is domiciled in this state;

(ii) The states in which the persons reside have associations similar to the association created by this chapter;

(iii) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law;

(3) For unallocated annuity contracts specified in subsection (B) of this section, paragraphs (1) and (2) shall not apply, and this chapter shall (except as provided in paragraphs (5) and (6) of this subsection) provide coverage to:

(a) Persons who are the owners of the unallocated annuity contracts if such contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and

(b) Persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents;

(4) For structured settlement annuities specified in subsection (B) of this section, paragraphs (1) and (2) shall not apply, and this chapter shall (except as provided in paragraphs (5) and (6) of this subsection) provide coverage to a person who is a payee under a structured settlement annuity (or beneficiary of a payee if the payee is deceased), if the payee:

- (a) Is a resident, regardless of where the contract owner resides, or
- (b) Is not a resident, but only under both of the following conditions:

(i)(I) The contract owner of the structured settlement annuity is a resident, or

(II) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state;

(III) The state in which the contract owner resides has an association similar to the Association created by this chapter; and

(ii) Neither the payee (or beneficiary) nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides;

(5) This chapter shall not provide coverage for:

(a) A person who is a payee (or beneficiary) of a contract owner resident of this state, if the payee (or beneficiary) is afforded any coverage by the association of another state; or

(b) A person covered in paragraph (A)(3) of this section if any coverage is provided by the association of another state to such person;

(6) This chapter is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person shall not be provided coverage under this chapter. In determining the application of the provision of this paragraph (A)(6) in situations where a person could be covered by the association of more than one (1) state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one (1) association.

B. This chapter shall provide coverage to the persons specified in subsection (A) of this section for direct, nongroup life, accident and health, or annuity policies or contracts for certificates under direct group policies and contracts, and for supplemental contracts to any of these, and for unallocated annuity contracts, in each case issued by member insurers, except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued to or in connection with government lotteries, and any immediate or deferred annuity contracts.

C.(1) No insurer or agent may deliver a policy or contract described in subsection (B) of this section and excluded under § 23-96-106(A)(1) from coverage under this chapter unless the insurer or agent, prior to or at the time of delivery, gives the policy or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the Arkansas Life and Health Insurance Guaranty Association.

(2) The commissioner shall by rule specify the form and content of the notice.

History. Acts 1989, No. 444, §§ 3, 19; 1997, No. 950, § 1; 2001, No. 1603, §§ 53, 54; 2013, No. 456, § 3.

Amendments. The 2013 amendment, in (B), deleted “and supplemental con-

tracts to any of these” preceding “for certificates,” inserted “and for supplemental contracts to any of these” preceding “and for unallocated,” and inserted “in each case” in the first sentence.

23-96-110. Powers and duties of association.

A. In addition to the rights and powers elsewhere in this chapter, the Association may:

(1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under § 23-96-115 and to settle claims or potential claims against it;

(3) Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness of the Association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(4) Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the Association and to perform such other functions as become necessary or proper under this chapter;

(5) Take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims;

(6) Exercise, for the purpose of this chapter and to the extent approved by the commissioner, the powers of a domestic life or accident and health insurer, but in no case may the Association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter;

(7) Organize itself as a corporation or in other legal form permitted by the laws of this state;

(8) Request information from a person seeking coverage from the Association in order to aid the Association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request; and

(9) Take other necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter.

B. The Association may render assistance and advice to the commissioner, upon his or her request, concerning rehabilitation, payment of

claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

C.(1) The Association shall have standing to appear or intervene before any court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the Association is or may become obligated under this chapter or with jurisdiction over any person or property against whom the Association may have rights through subrogation or otherwise. Provided, at its option, the Association may appear solely for the purpose of receiving copies of all pleadings and notices and attending hearings without otherwise becoming a party to the proceeding. Such standing shall extend to all matters germane to the powers and duties of the Association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations.

(2) The Association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the Association is or may become obligated or with jurisdiction over any person or property against whom the Association may have rights through subrogation or otherwise.

D. The Association may join an organization of one (1) or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the Association.

E.(1)(a) Records shall be kept of all meetings of the board of directors to discuss the activities of the Association in carrying out its powers and duties under §§ 23-96-111 — 23-96-114 and 23-96-120.

(b) The records of the Association with respect to an impaired or insolvent insurer shall not be disclosed prior to the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction.

(2) Nothing in this subsection shall limit the duty of the Association to render a report of its activities under § 23-96-109(A)(4).

F.(1)(a) At any time within one hundred eighty (180) days of the date of the order of liquidation, the Association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the Association, in each case under any one (1) or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the Association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the Association or the National Organization of Life and Health Insurance Guaranty Associations on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(b) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance and in order to protect the

financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the Association or to the National Organization of Life and Health Insurance Guaranty Associations on its behalf as soon as possible after commencement of formal delinquency proceedings (i) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed, and (ii) notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.

(c) The following subparagraphs (i) through (iv) shall apply to reinsurance contracts so assumed by the Association:

(i) The Association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or annuities covered, in whole or in part, by the Association. The Association may charge policies or annuities covered in part by the Association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Association and shall provide notice and an accounting of these charges to the liquidator;

(ii) The Association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or annuities covered, in whole or in part, by the Association, provided that, upon receipt of any such amounts, the Association shall be obliged to pay to the beneficiary under the policy or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(A) The amount received by the Association; and

(B) The excess of the amount received by the Association over the amount equal to the benefits paid by the Association on account of the policy or annuity less the retention of the insurer applicable to the loss or event;

(iii) Within thirty (30) days following the Association's election, the election date, the Association and each reinsurer under contracts assumed by the Association shall calculate the net balance due to or from the Association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the Association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the Association or reinsurer shall pay any remaining balance due the other, in each case within five (5) days of the completion of the aforementioned calculation. Any disputes over

the amounts due to either the Association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the Association pursuant to subparagraph (c)(ii) of this paragraph (F)(1), the receiver shall remit the same to the Association as promptly as practicable; and

(iv) If the Association or receiver, on the Association's behalf, within sixty (60) days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies or annuities covered, in whole or in part, by the Association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as the reinsurance contracts relate to policies or annuities covered, in whole or in part, by the Association and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the Association, against amounts due the Association.

(2)(a) During the period from the date of the order of liquidation until the election date or, if the election date does not occur, until one hundred eighty (180) days after the date of the order of liquidation:

(i) Neither the Association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the Association has the right to assume under paragraph (F)(1) of this section, whether for periods prior to or after the date of the order of liquidation; and

(ii) The reinsurer, the receiver, and the Association shall, to the extent practicable, provide each other data and records reasonably requested.

(b) Provided that once the Association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by paragraph (F)(1) of this section.

(3) If the Association does not elect to assume a reinsurance contract by the election date pursuant to paragraph (F)(1) of this section, the Association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(4) When policies or annuities or covered obligations with respect thereto are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the Association, in the case of contracts assumed under paragraph (F)(1) of this section, subject to the following:

(a) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance or annuities in addition to those transferred;

(b) The obligations described in paragraph (F)(1) of this section shall no longer apply with respect to matters arising after the effective date of the transfer; and

(c) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than thirty (30) days prior to the effective date of the transfer.

(5) The provisions of this subsection (F) shall supersede the provisions of any law of this state or of any affected reinsurance agreement(s) that provide for or require any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable by the reinsurer under the reinsurance agreement(s) with respect to losses or events that occur in periods prior to the coverage date (subject to applicable setoff provisions).

(6) Except as otherwise expressly provided above, nothing herein shall alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. Nothing herein shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. Nothing herein shall give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement. Nothing in this section shall give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the Association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks.

G. The board of directors of the Association shall have discretion and may exercise reasonable business judgment to determine the means by which the Association is to provide the benefits of this chapter in an economical and efficient manner and may provide additional or alternative coverages and benefits in appropriate situations.

H. Where the Association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the Association's obligations under this chapter, the person shall not be entitled to benefits from the Association in addition to or other than those provided under the plan or arrangement.

I. Venue in a suit against the Association arising under this chapter shall be in Pulaski County. The Association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

History. Acts 1989, No. 444, §§ 8, 14; 1997, No. 950, § 1; 2001, No. 1603, § 57; 2001, No. 1604, § 121; 2013, No. 456, § 4.

Amendments. The 2013 amendment rewrote (F); redesignated former (H) and

(I) as (F)(5) and (F)(6), and redesignated the remaining subdivisions accordingly; and added the last three sentences in (F)(6).

23-96-114. Liability for benefits — Assignment or subrogation of rights.

A. The benefits that the Association may become obligated to cover shall in no event exceed the lesser of:

(1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2)(a) With respect to any one (1) life, regardless of the number of policies or contracts:

(i) Three hundred thousand dollars (\$300,000) in life insurance death benefits or net cash surrender and net cash withdrawal values for life insurance;

(ii) Five hundred thousand dollars (\$500,000) in accident and health insurance benefits, including any net cash surrender and net cash withdrawal values, provided coverage for disability insurance benefits and long term care insurance benefits shall not exceed three hundred thousand dollars (\$300,000);

(iii) Three hundred thousand dollars (\$300,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(b) With respect to each individual participating in a governmental retirement benefit plan established under section 401(k), section 403(b), or section 457, of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate three hundred thousand dollars (\$300,000) in present value annuity benefits, including net cash surrender and net cash withdrawal values;

(c) With respect to each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, three hundred thousand dollars (\$300,000) in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any.

B.(1) Provided, however, that in no event shall the Association be obligated to cover more than (i) three hundred thousand dollars (\$300,000) in benefits in the aggregate with respect to any one (1) life under §§ 23-96-106, 23-96-107, and this section except with respect to benefits for basic hospital, medical, and surgical insurance and major medical insurance under paragraph (A)(2)(a)(ii) of this section, in which case the aggregate liability of the Association shall not exceed five hundred thousand dollars (\$500,000) with respect to any one (1) individual, or (ii) with respect to one (1) owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees, or other persons, more than one million dollars (\$1,000,000) in benefits, regardless of the number of policies and contracts held by the owner;

(2) With respect to either (i) one (1) contract owner provided coverage under § 23-96-107(A)(3)(b); or (ii) one (1) plan sponsor whose plans own

directly or in trust one (1) or more unallocated annuity contracts not included in paragraph (A)(2)(b) of this section, one million dollars (\$1,000,000) in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case where one (1) or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two (2) or more plan sponsors, coverage shall be afforded by the Association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state, and in no event shall the Association be obligated to cover more than one million dollars (\$1,000,000) in benefits with respect to all of these unallocated contracts.

(3) The limitations set forth in this subsection (B) are limitations on the benefits for which the Association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the Association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the Association pursuant to its subrogation and assignment rights.

(4) In performing its obligations to provide coverage under § 23-96-111, the Association shall not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

C.(1) Any person receiving benefits under this chapter shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy or contract to the Association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The Association may require an assignment to it of such rights and cause of action by any payee, policy, or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this chapter upon such person.

(2) The subrogation rights of the Association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

(3) In addition to paragraphs (1) and (2) of this subsection, the Association shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to such policy or contracts.

(4) If the preceding provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the Association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies (or portion thereof) covered by the Association.

(5) If the Association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the Association has rights as described in the preceding paragraphs of this subsection, the person shall pay to the Association the portion of the recovery attributable to the policies (or portion thereof) covered by the Association.

D.(1) For the purpose of carrying out its obligations under this chapter, the Association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the Association is entitled as subrogee pursuant to subsection (C) of this section. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter.

(2) "Assets attributable to covered policies", as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

E. As a creditor of the impaired or insolvent insurer as established in subsection (D) of this section and consistent with § 23-68-126, the Association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available, to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within one hundred twenty (120) days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the Association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

F. It is the intent of the General Assembly that the coverage provided through the Arkansas Life and Health Insurance Guaranty Association for any annuity contract executed pursuant to § 11-9-210 shall be the lesser of the contractual obligations of the insurer or one hundred thousand dollars (\$100,000) in the present value of annuity benefits including net cash surrender and net cash withdrawal values as provided in subsection (A) of this section;

G. It is the intent of the General Assembly that coverage provided by the Arkansas Life and Health Insurance Guaranty Association for annuity contracts executed pursuant to § 11-9-210 shall not be affected

by the fact that the annuity payments are sent to the Workers' Compensation Commission for distribution to the claimants and beneficiaries, and that any funds provided by the Arkansas Life and Health Insurance Guaranty Association for payment to claimants or beneficiaries for whom annuity contracts are executed under § 11-9-210 shall be sent to the Workers' Compensation Commission for distribution to claimants or beneficiaries.

History. Acts 1989, No. 444, §§ 3, 8, 14; 1991, No. 651, § 2; 1997, No. 950, § 1; 2001, No. 1603, §§ 60-62; 2001, No. 1604, § 123; 2013, No. 456, § 5.

Amendments. The 2013 amendment rewrote (A)(2)(a)(ii), (A)(2)(c), and (B).

CHAPTER 97

LONG-TERM CARE INSURANCE

SUBCHAPTER.

2. LONG-TERM CARE INSURANCE ACT. [REPEALED.]
3. LONG-TERM CARE INSURANCE ACT OF 2005.

SUBCHAPTER 2 — LONG-TERM CARE INSURANCE ACT

SECTION.

23-97-201 — 23-97-213. [Repealed.]

23-97-201 — 23-97-213. [Repealed.]

A.C.R.C. Notes. Pursuant to Acts 2005, No. 1962, § 119, the repeal of § 23-97-213 by Acts 2005, No. 1697, § 32 supersedes the amendment of § 23-97-213 by Acts 2005, No. 1962, § 111.

Publisher's Notes. This subchapter was repealed by Acts 2005, No. 1697, § 32. The subchapter was derived from the following sources:

- 23-97-201. Acts 1989, No. 642, § 3.
- 23-97-202. Acts 1989, No. 642, § 1.
- 23-97-203. Acts 1989, No. 642, § 4; 1997, No. 517, §§ 1, 2; 2001, No. 1603, § 64.
- 23-97-204. Acts 1989, No. 642, § 2; 1997, No. 517, § 3.

- 23-97-205. Acts 1989, No. 642, § 6.
- 23-97-206. Acts 1989, No. 642, § 7.
- 23-97-207. Acts 1989, No. 642, § 5.
- 23-97-208. Acts 1989, No. 642, § 6; 1997, No. 517, § 4.
- 23-97-209. Acts 1989, No. 642, § 6.
- 23-97-210. Acts 1989, No. 642, § 6; 1993, No. 901, § 43.
- 23-97-211. Acts 1989, No. 642, § 6; 1997, No. 517, § 5.
- 23-97-212. Acts 1989, No. 642, § 6; 1997, No. 517, § 6.
- 23-97-213. Acts 1989, No. 642, § 6; 1997, No. 517, § 7.

SUBCHAPTER 3 — LONG-TERM CARE INSURANCE ACT OF 2005

SECTION.

- 23-97-301. Short title.
- 23-97-302. Purpose.
- 23-97-303. Scope.
- 23-97-304. Definitions.
- 23-97-305. Requirements for associations.

SECTION.

- 23-97-306. Extraterritorial jurisdiction — Group long-term care insurance.
- 23-97-307. Disclosure and performance standards for long-term care insurance.

SECTION.

- 23-97-308. Preexisting condition.
- 23-97-309. Prior hospitalization or institutionalization.
- 23-97-310. Loss ratio standards.
- 23-97-311. Right to return — Free look.
- 23-97-312. Outline of coverage.
- 23-97-313. Certificates.
- 23-97-314. Delivery of policy and summary — Disclosures.

SECTION.

- 23-97-315. Acceleration of death benefit.
- 23-97-316. Denial of claims.
- 23-97-317. Offer of long-term care or nursing home insurance.
- 23-97-318. Incontestability period.
- 23-97-319. Nonforfeiture benefits.
- 23-97-320. Authority to promulgate regulations.
- 23-97-321. Penalties.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: “Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory

actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage.”

23-97-301. Short title.

This subchapter shall be known and may be cited as the “Long-Term Care Insurance Act of 2005”.

History. Acts 2005, No. 1697, § 31.

23-97-302. Purpose.

The purpose of this subchapter is to:

- (1) Promote the public interest;
- (2) Promote the availability of long-term care insurance policies;
- (3) Protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices;
- (4) Establish standards for long-term care insurance;
- (5) Facilitate public understanding and comparison of long-term care insurance policies; and
- (6) Facilitate flexibility and innovation in the development of long-term care insurance coverage.

History. Acts 2005, No. 1697, § 31.

23-97-303. Scope.

(a) The requirements of this subchapter apply to policies delivered or issued for delivery in this state on or after August 12, 2005.

(b) Except as provided in subsection (c) of this section, this subchapter is not intended to supersede the obligations to comply with other applicable insurance laws that do not conflict with this subchapter.

(c) Laws and regulations designed and intended to apply to Medicare supplement insurance policies shall not be applied to long-term care insurance.

History. Acts 2005, No. 1697, § 31.

23-97-304. Definitions.

As used in this subchapter:

(1) "Applicant" means:

(A) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(B) In the case of a group long-term care insurance policy, the proposed certificate holder;

(2) "Association" means a professional, trade, or occupational association or associations, if the association:

(A) Is composed entirely of individuals that are or were actively engaged in the same profession, trade, or occupation; and

(B) Has been maintained in good faith for purposes other than obtaining insurance;

(3) "Certificate" means any certificate issued under a group long-term care insurance policy delivered or issued for delivery in this state;

(4) "Commissioner" means the Insurance Commissioner;

(5) "Federally tax-qualified long-term care insurance contract" means:

(A) An individual or group insurance contract that meets the following requirements of section 7702B(b) of the Internal Revenue Code of 1986:

(i)(a) The only insurance protection provided under the contract is coverage of qualified long-term care services.

(b) A contract satisfies the requirements of this subdivision (5)(A)(i) even though payments are made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(ii)(a) The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses:

(1) Are reimbursable under Title XVIII of the Social Security Act; or

(2) Would be reimbursable but for the application of a deductible or coinsurance amount.

(b) The requirements of this subdivision (5)(A)(ii) do not apply to expenses that are reimbursable under Title XVIII of the Social Security Act only as a secondary payor.

(c) A contract satisfies the requirements of this subdivision (5)(A)(ii) even though payments are made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(iii) The contract is guaranteed renewable under section 7702B(b)(1)(C) of the Internal Revenue Code of 1986;

(iv) The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed, except as provided in subdivision (5)(A)(v) of this section;

(v) All refunds of premiums, policyholder dividends, or similar amounts under the contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund in the event of the death of the insured or a complete surrender or cancellation of the contract cannot exceed the aggregate premiums paid under the contract; and

(vi) The contract meets the consumer protection provisions set forth in section 7702B(g) of the Internal Revenue Code of 1986; or

(B) The portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of sections 7702B(b) and 7702B(e) of the Internal Revenue Code of 1986;

(6) "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state and issued for the benefit of its current, former, or retired employees or members to one (1) or more:

(A) Employers, labor organizations, associations, or a trust or to the trustees of a fund established by one (1) or more employers or labor organizations; or

(B) Any other group if the commissioner finds that the issuance of the group policy:

(i) Is not contrary to the best interest of the public;

(ii) Results in economies of acquisition or administration; and

(iii) Results in benefits that are reasonable in relation to the premiums charged;

(7)(A) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services:

(i) For not less than twelve (12) consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis; and

(ii) Provided in a setting other than an acute care unit of a hospital.

(B) "Long-term care insurance" includes, but is not limited to:

(i) Group and individual annuities and life insurance policies or riders that provide directly or supplement long-term care insurance;

(ii) A policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity; and

(iii) Qualified long-term care insurance contracts.

(C) Long-term care insurance may be issued by:

- (i) Insurers;
- (ii) Fraternal benefit societies;
- (iii) Nonprofit health, hospital, and medical service corporations;
- (iv) Prepaid health plans;
- (v) Health maintenance organizations; or
- (vi) Any similar organization to the extent that the organization is otherwise authorized to issue life or health insurance.

(D) "Long-term care insurance" shall not include any insurance policy that is offered primarily to provide:

- (i) Basic Medicare supplement coverage;
- (ii) Basic hospital expense coverage;
- (iii) Basic medical-surgical expense coverage;
- (iv) Hospital confinement indemnity coverage;
- (v) Major medical expense coverage;
- (vi) Disability income or related asset-protection coverage;
- (vii) Accident-only coverage;
- (viii) Specified disease or specified accident coverage; or
- (ix) Limited benefit health coverage.

(E) "Long-term care insurance" does not include life insurance policies:

- (i) That accelerate the death benefit specifically for:
 - (a) One (1) or more of the qualifying events of terminal illness; or
 - (b) Medical conditions requiring extraordinary medical intervention or permanent institutional confinement;
- (ii) That provide the option of a lump-sum payment for those benefits; and
- (iii) When neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

(F) Notwithstanding any other provision of this subchapter, any product advertised, marketed, or offered as long-term care insurance is subject to the provisions of this subchapter;

(8) "Policy" means any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by:

- (A) An insurer;
- (B) A fraternal benefit society;
- (C) A nonprofit health, hospital, medical service corporation, or hospital medical service corporation;
- (D) A prepaid health plan;
- (E) A health maintenance organization; or
- (F) Any similar organization; and

(9) "Qualified long-term care insurance contract" means the same as "federally tax-qualified long-term care insurance contract".

History. Acts 2005, No. 1697, § 31; 2007, No. 496, § 20; 2007, No. 827, § 188.

A.C.R.C. Notes. Acts 2007, No. 496, § 19, provided: "The purpose of sections 20 and 21 of this act is to correct references to the Internal Revenue Code in the

Long-Term Care Insurance Act of 2005, § 23-97-301 et seq., that may act to restrict the tax qualification determination of long-term care insurance contracts to the federal tax qualification of the contract under the Internal Revenue Code of

1986, as it existed on January 1, 2004. It is not the intent of the General Assembly to limit the tax qualification determination of long-term care insurance contracts to the federal tax qualification of the contract under the Internal Revenue Code of 1986, as it existed on January 1, 2004.”

Pursuant to Acts 2007, No. 827, § 240, the amendment of § 23-97-304(5) by Acts 2007, No. 496, § 20 supersedes the

amendment of § 23-97-304(5) by Acts 2007, No. 827, § 188.

U.S. Code. Section 7702B(b), (b)(1)(C), (e) and (g) of the Internal Revenue Code of 1986, referred to in (5), are codified as 26 U.S.C. §§ 7702B(b), (b)(1)(C), (e) and (g), respectively.

Title XVIII of the Social Security Act, referred to in (5), is codified as 42 U.S.C. § 1395 et seq.

23-97-305. Requirements for associations.

(a) Prior to advertising, marketing, or offering a policy within this state, an association or the insurer of the association shall file evidence with the Insurance Commissioner that the association has:

- (1) A minimum of one hundred (100) persons;
- (2) Been organized and maintained in good faith for purposes other than that of obtaining insurance;
- (3) Been in active existence for at least one (1) year; and
- (4) Had a constitution and bylaws providing that:
 - (A) The association holds regular meetings not less than annually to further purposes of the members;
 - (B) Except for credit unions, the association collects dues or solicits contributions from members; and
 - (C) The members have voting privileges and representation on the governing board and committees.

(b) Thirty (30) days after the filing, the association or associations will be deemed to satisfy the organizational requirements unless the commissioner makes a finding that the association or associations do not satisfy those organizational requirements.

History. Acts 2005, No. 1697, § 31.

23-97-306. Extraterritorial jurisdiction — Group long-term care insurance.

No group long-term care insurance coverage may be offered to a resident of this state under a group policy issued in another state unless this state or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this state determines that the definition of “group long-term care insurance” under § 23-97-304 has been met.

History. Acts 2005, No. 1697, § 31.

23-97-307. Disclosure and performance standards for long-term care insurance.

(a) The Insurance Commissioner may adopt regulations for long-term care insurance that include, but are not limited to, standards for full and fair disclosure addressing:

- (1) The manner, content, and required disclosures for the sale of long-term care insurance policies;
- (2) Terms of renewability;
- (3) Initial and subsequent conditions of eligibility;
- (4) Nonduplication of coverage provisions;
- (5) Coverage of dependents;
- (6) Preexisting conditions;
- (7) Termination of insurance;
- (8) Continuation or conversion of coverage;
- (9) Probationary periods;
- (10) Limitations, exceptions, reductions, and elimination periods;
- (11) Requirements for replacement;
- (12) Recurrent conditions; and
- (13) Definitions of terms.

(b) No long-term care insurance policy shall:

(1) Be cancelled, not renewed, or otherwise terminated because of age or the deterioration of the mental or physical health of the insured individual or certificate holder;

(2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form of coverage within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

(3) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care within a facility than coverage for lower levels of care.

History. Acts 2005, No. 1697, § 31.

23-97-308. Preexisting condition.

(a) No long-term care insurance policy or certificate other than a policy or certificate issued to a group approved by the Insurance Commissioner under § 23-97-304(6)(B) shall:

(1) Use a definition of “preexisting condition” that is more restrictive than the following: “Preexisting condition” means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within six (6) months preceding the effective date of coverage of an insured person; or

(2) Exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within six (6) months following the effective date of coverage of an insured person.

(b) The commissioner may extend the limitation periods set forth in subsection (a) of this section for specific age group categories in specific policy forms upon finding that the extension is in the best interest of the public.

(c)(1) The definition of “preexisting condition” does not prohibit an insurer from using an application form designed to elicit the complete

health history of an applicant when underwriting in accordance with the insurer's established underwriting standards.

(2) Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subdivision (a)(2) of this section expires.

(3) No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subdivision (a)(2) of this section.

History. Acts 2005, No. 1697, § 31.

23-97-309. Prior hospitalization or institutionalization.

(a) No long-term care insurance policy shall be delivered or issued for delivery in this state if the policy:

(1) Conditions eligibility for any benefits on a prior hospitalization requirement;

(2) Conditions eligibility for any benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(3) Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.

(b)(1) A long-term care insurance policy containing post-confinement, post-acute care, or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits" the limitations or conditions, including any required number of days of confinement.

(2) A long-term care insurance policy or rider that conditions eligibility for noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days.

(c) No long-term care insurance policy or rider that provides benefits only following institutionalization shall condition such benefits upon admission to a facility for the same or related conditions within a period of less than thirty (30) days after discharge from the institution.

History. Acts 2005, No. 1697, § 31.

23-97-310. Loss ratio standards.

(a) The Insurance Commissioner may adopt rules establishing loss ratio standards for long-term care insurance policies.

(b) A specific reference to long-term care insurance policies shall be contained in the rules.

History. Acts 2005, No. 1697, § 31.

23-97-311. Right to return — Free look.

(a) Long-term care insurance applicants shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if after examination of the policy or certificate the applicant is not satisfied for any reason.

(b) Long-term care insurance policies and certificates shall contain a notice prominently printed on or attached to the first page stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if after examination of the policy or certificate the applicant is not satisfied for any reason.

(c) If an application is denied, the issuer shall refund to the applicant any premium and any other fee paid by the applicant to apply within thirty (30) days of the denial.

History. Acts 2005, No. 1697, § 31.

23-97-312. Outline of coverage.

(a)(1) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the outline of coverage and its purpose.

(2) The Insurance Commissioner shall prescribe a standard format for the outline, including style, arrangement, overall appearance, and content.

(3) In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(4) In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

(5)(A) In the case of a policy issued to a group approved by the commissioner under § 23-97-304(6)(B), an outline of coverage shall not be required to be delivered if the information described in subsection (b) of this section is provided to applicants in other materials relating to enrollment.

(B) Materials relating to enrollment shall be made available to the commissioner upon request.

(b) The outline of coverage shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions, and limitations contained in the policy;

(3)(A) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium.

(B) Continuation or conversion provisions of group coverage shall be specifically described;

(4) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

(5) A description of the terms under which the policy or certificate may be returned and premium refunded;

(6) A brief description of the relationship between cost of care and benefits; and

(7) A statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified long-term care insurance contract under section 7702B(b) of the Internal Revenue Code of 1986.

History. Acts 2005, No. 1697, § 31; 2007, No. 496, § 21.

A.C.R.C. Notes. Acts 2007, No. 496, § 19, provided:

“The purpose of sections 20 and 21 of this act is to correct references to the Internal Revenue Code in the Long-Term Care Insurance Act of 2005, § 23-97-301 et seq., that may act to restrict the tax qualification determination of long-term care insurance contracts to the federal tax qualification of the contract under the

Internal Revenue Code of 1986, as it existed on January 1, 2004. It is not the intent of the General Assembly to limit the tax qualification determination of long-term care insurance contracts to the federal tax qualification of the contract under the Internal Revenue Code of 1986, as it existed on January 1, 2004.”

U.S. Code. Section 7702B(b) of the Internal Revenue Code of 1986, referred to in (b)(7), is codified as 26 U.S.C. § 7702B(b).

23-97-313. Certificates.

A certificate issued for delivery in this state under a group long-term care insurance policy shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions, and limitations contained in the policy; and

(3) A statement that the group master policy determines governing contractual provisions.

History. Acts 2005, No. 1697, § 31.

23-97-314. Delivery of policy and summary — Disclosures.

(a) If an application for a long-term care insurance contract or certificate is approved, the issuer shall deliver the contract or certificate of insurance to the applicant no later than thirty (30) days after the date of approval.

(b)(1) At the time of the delivery of the policy, a policy summary shall be delivered for an individual life insurance policy that provides long-term care benefits within the policy or by rider.

(2) In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request or at the time of policy delivery, whichever first occurs.

(3) The summary shall comply with all applicable requirements and include:

(A) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(B) An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits, if any, for each covered person;

(C) Any exclusions, reductions, and limitations on long-term care benefits; and

(D) A statement that any long-term care inflation protection option, if required by rules and regulations of the Insurance Commissioner, is not available under the policy.

(4) If applicable to the policy type, the summary shall also include:

(A) A disclosure of the effects of exercising other rights under the policy;

(B) A disclosure of guarantees related to long-term care costs of insurance charges; and

(C) Current and projected maximum lifetime benefits.

History. Acts 2005, No. 1697, § 31.

23-97-315. Acceleration of death benefit.

(a) Any time a long-term care benefit funded through a life insurance vehicle by the acceleration of the death benefit is in benefit payment status, a monthly report shall be provided to the policyholder.

(b) The report shall include:

(1) Any long-term care benefits paid out during the month;

(2) An explanation of any changes in the policy, including, but not limited to, death benefits or cash values, due to the payment of long-term care benefits; and

(3) The remaining amount of long-term care benefits.

History. Acts 2005, No. 1697, § 31.

23-97-316. Denial of claims.

If a claim under a long-term care insurance contract is denied, within sixty (60) days of the date of a written request by the policyholder or certificate holder or a representative of the policyholder or certificate holder, the issuer shall:

(1) Provide a written explanation of the reasons for the denial; and

(2) Make available all information directly related to the denial.

History. Acts 2005, No. 1697, § 31.

23-97-317. Offer of long-term care or nursing home insurance.

Any policy or rider advertised, marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of this subchapter.

History. Acts 2005, No. 1697, § 31.

23-97-318. Incontestability period.

(a) An insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim if:

(1) The long-term care insurance policy or certificate has been in force for less than six (6) months and the insurer relied upon a material misrepresentation in providing coverage; or

(2) The long-term care insurance policy or certificate has been in force for at least six (6) months but less than two (2) years and the insurer relied upon a material misrepresentation in providing coverage that pertains to the condition for which benefits are sought.

(b) A policy or certificate that has been in force for two (2) years or more may be contested only by showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(c)(1) No long-term care insurance policy or certificate may be field issued based on medical or health status.

(2) As used in this section, "field issued" means issued by an agent or a third-party administrator under the underwriting authority granted to the agent or third-party administrator by an insurer.

(d) If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer if the policy or certificate is rescinded.

(e)(1) Except as provided in subdivision (e)(2) of this section, this section shall apply to all life insurance policies that accelerate benefits for long-term care.

(2)(A) In the event of the death of the insured, this section shall not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care.

(B) The remaining death benefit shall be governed by § 23-81-105.

History. Acts 2005, No. 1697, § 31;
2007, No. 827, § 189.

23-97-319. Nonforfeiture benefits.

(a)(1) Except as provided in subsection (b) of this section, a long-term care insurance policy may not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate containing a nonforfeiture benefit.

(2) The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy.

(3) If the policyholder or certificate holder declines the nonforfeiture benefit, then the insurer shall provide a contingent benefit upon lapse that shall be available for the period of time specified by the Insurance Commissioner following a substantial increase in premium rates.

(b)(1) When a group long-term care insurance policy is issued, the offer required in subsection (a) of this section shall be made to the group policyholder.

(2) However, if the policy is issued as group long-term care insurance as defined under § 23-97-304(6)(B), other than to a continuing care retirement community or similar entity, then the offering shall be made to each proposed certificate holder.

(c) The commissioner shall promulgate rules specifying:

(1) The type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates;

(2) The standards for nonforfeiture benefits; and

(3) The rules regarding contingent benefit upon lapse, including a determination of the specified period of time during which a contingent benefit upon lapse will be available and the substantial premium rate increase that triggers a contingent benefit upon lapse under subsection (a) of this section.

History. Acts 2005, No. 1697, § 31.

23-97-320. Authority to promulgate regulations.

The Insurance Commissioner shall issue rules for long-term care insurance to:

(1) Promote premium adequacy;

(2) Protect the policyholder in the event of substantial rate increases; and

(3) Establish minimum standards for:

(A) Marketing practices;

(B) Agent compensation;

(C) Agent testing;

(D) Penalties; and

(E) Reporting practices.

History. Acts 2005, No. 1697, § 31.

23-97-321. Penalties.

In addition to any other penalties provided by the laws of this state, any insurer or agent found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of long-term care insurance is subject to the greater of:

(1) A fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation; or

(2) A fine of up to ten thousand dollars (\$10,000).

History. Acts 2005, No. 1697, § 31.

CHAPTER 99

HEALTH CARE PROVIDERS

SUBCHAPTER.

2. PATIENT PROTECTION ACT OF 1995.
 4. ARKANSAS HEALTH CARE CONSUMER ACT.
 5. ARKANSAS MENTAL HEALTH PARITY ACT OF 2009.
 8. ENFORCEMENT OF ANY WILLING PROVIDER LAWS.
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A.C.R.C. Notes. Acts 2005, No. 490, the Patient Protection Act of 2005, will not become effective pursuant to section 2 of that act because the 8th Circuit Court of Appeals affirmed the part of the district court ruling that dissolved the permanent injunction barring enforcement of the Patient Protection Act of 1995, § 23-99-201 et seq., as it applies to health insurers of private, insured ERISA plans. See *Prudential Ins. Co. of Am. v. Nat'l Park Med. Ctr., Inc.*, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12, 2004), aff'd in part, rev'd in part, and remanded, 413 F.3d 897 (8th Cir. 2005).

Acts 2005, No. 490, § 2, provided: "This act shall become effective only if the Eighth Circuit Court of Appeals in *Prudential Insurance Co., et al. v. HMO Partners, Inc., et al.*, U.S.C.A. No. 04-1465/04-1644, does not order the injunction against enforcement of the Patient Protection Act of 1995 lifted as to health insurers of private, insured ERISA plans. If the injunction is not lifted, then this act shall take effect upon the entry of the mandate from the Eighth Circuit, and the Patient Protection Act of 1995, Arkansas Code 23-99-201 through 209 shall be repealed simultaneously as follows:"

SUBCHAPTER 2 — PATIENT PROTECTION ACT OF 1995

SECTION.

- 23-99-203. Definitions.
23-99-207. Civil penalties.
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Publisher's Notes. In 1997, this subchapter was held to be preempted by the federal Employment Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., and a permanent injunction barring the enforcement of this subchapter was granted. See *Prudential Ins. Co. of America v. National Park Medical Ctr.*, 964 F. Supp. 1285 (E.D. Ark. 1997), aff'd, 154 F.3d 812 (8th Cir. 1998). However, the permanent injunction was subsequently dissolved based upon a decision by the

United States Supreme Court involving similar statutory law of another state. See *Prudential Ins. Co. of America v. National Park Medical Ctr., Inc.*, — F. Supp. 2d, —, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12, 2004.) aff'd in part, rev'd in part, and remanded, 413 F.3d 897 (8th Cir. 2005).

Cross References. Enforcement of any willing provider laws, § 23-99-801 et seq.

23-99-201. Short title.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Note, Preemption, 27 U. Ark. Little Rock L. Rev. 407.
Puncturing the Funnel — Saving the “Any Willing Provider” Statutes from ERISA

CASE NOTES

ANALYSIS

Construction With Other Law.
Federal Preemption.

Construction With Other Law.

Patient Protection Act, § 23-99-201 et seq., was not repealed by the Freedom of Choice Among Health Benefit Plans Act of 1999, § 23-86-401 et seq. Prudential Ins. Co. of Am. v. Nat’l Park Med. Ctr., Inc., — F. Supp.2d —, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12, 2004), aff’d in part, reversed in part, 413 F.3d 897 (8th Cir. 2005).

Federal Preemption.

A permanent injunction barring health care providers who were seeking admit-

tance into an insurer’s exclusive provider networks pursuant to the Patient Protection Act was dissolved pursuant to Fed. R. Civ. P. 60(b)(5) after the U.S. Supreme Court held that a similar law in Kentucky was not preempted by ERISA, on the basis that the Supreme Court decision constituted an extraordinary circumstance. Prudential Ins. Co. of Am. v. Nat’l Park Med. Ctr., Inc., — F. Supp.2d —, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12, 2004), aff’d in part, reversed in part, 413 F.3d 897 (8th Cir. 2005).

23-99-202. Legislative findings and intent.

CASE NOTES

Cited: Prudential Ins. Co. of America v. National Park Medical Ctr., 964 F. Supp. 1285 (E.D. Ark. 1997).

23-99-203. Definitions.

(a)(1) “Copayment” means a type of cost sharing whereby insured or covered persons pay a specified predetermined amount per unit of service or percentage of health care costs with their health care insurer paying the remainder of the charge.

(2) The copayment is incurred at the time the service is rendered.

(3) The copayment may be a fixed or variable amount.

(b) “Gatekeeper system” means a system of administration used by any health benefit plan in which a primary care provider furnishes basic patient care and coordinates diagnostic testing, indicated treatment, and specialty referral for persons covered by the health benefit plan.

(c) “Health benefit plan” means any entity or program that provides reimbursement, including capitation, for health care services, except and excluding any entity or program that provides reimbursement and

benefits pursuant to Arkansas Constitution, Amendment 26, Acts 1993, No. 796, or the Public Employee Workers' Compensation Act, § 21-5-601 et seq., and rules, regulations, and schedules adopted thereunder.

(d) "Health care provider" means those individuals or entities licensed by the State of Arkansas to provide health care services, limited to the following:

- (1) Advanced practice nurses;
- (2) Athletic trainers;
- (3) Audiologists;
- (4) Certified orthotists;
- (5) Chiropractors;
- (6) Community mental health centers or clinics;
- (7) Dentists;
- (8) Home health care;
- (9) Hospice care;
- (10) Hospital-based services;
- (11) Hospitals;
- (12) Licensed ambulatory surgery centers;
- (13) Licensed certified social workers;
- (14) Licensed dieticians;
- (15) Licensed professional counselors;
- (16) Licensed psychological examiners;
- (17) Long-term care facilities;
- (18) Occupational therapists;
- (19) Optometrists;
- (20) Pharmacists;
- (21) Physical therapists;
- (22) Physicians and surgeons (M.D. and D.O.);
- (23) Podiatrists;
- (24) Prosthetists;
- (25) Psychologists;
- (26) Respiratory therapists;
- (27) Rural health clinics; and
- (28) Speech pathologists.

(e) "Health care services" means services and products provided by a health care provider within the scope of the provider's license.

(f) "Health care insurer" means any entity, including, but not limited to:

- (1) Insurance companies;
- (2) Hospital and medical service corporations;
- (3) Health maintenance organizations;
- (4) Preferred provider organizations;
- (5) Physician hospital organizations;
- (6) Third party administrators; and
- (7) Prescription benefit management companies,

authorized to administer, offer, or provide health benefit plans.

History. Acts 1995, No. 505, § 3; 1995, No. 1193, § 1; 2005, No. 2238, § 1.

CASE NOTES

Cited: Prudential Ins. Co. of America v. National Park Medical Ctr., 964 F. Supp. 1285 (E.D. Ark. 1997).

23-99-205. Construction.

CASE NOTES

In General.

A permanent injunction barring health care providers who were seeking admittance into an insurer's exclusive provider networks pursuant to the Patient Protection Act was dissolved pursuant to Fed. R. Civ. P. 60(b)(5) after the U.S. Supreme Court held that a similar law in Kentucky

was not preempted by ERISA, on the basis that the Supreme Court decision constituted an extraordinary circumstance. Prudential Ins. Co. of Am. v. Nat'l Park Med. Ctr., Inc., — F. Supp.2d —, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12, 2004), *aff'd* in part, reversed in part, 413 F.3d 897 (8th Cir. 2005).

23-99-207. Civil penalties.

To the extent permitted by ERISA, the federal Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., any provider adversely affected by a violation of this subchapter may sue in circuit court only for injunctive relief against the health care insurer, but not for damages. The prevailing party shall be allowed a reasonable attorney's fee and costs.

History. Acts 1995, No. 505, § 6; 2005, No. 960, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Insurance Law, 28 U. Ark. Little Rock L. Rev. 393.

CASE NOTES

Suits for Damages.

Anti-Injunction Act, 28 U.S.C.S. § 2283, deprived the district court of jurisdiction over the suit filed by two health insurance companies under the All Writs Act, 28 U.S.C.S. § 1651, which sought to enjoin several health care providers from prosecuting a state court suit against the companies. The relitigation exception to Anti-Injunction Act did not apply because the court had not previously entered a final judgment determining the providers' claims under the Arkansas Any Willing Provider statute or their claims for dam-

ages under the pre-2005 version of this section. Ark. Blue Cross & Blue Shield v. St. Vincent Infirmary Med. Ctr., — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 92101 (E.D. Ark. Dec. 5, 2007), *aff'd*, Ark. Blue Cross & Blue Shield v. Little Rock Cardiology Clinic, P.A., 551 F.3d 812 (8th Cir. 2009).

Neither the *res judicata* nor collateral estoppel doctrines applied to bar the claims asserted by several health providers against two health insurance companies under the Arkansas Any Willing Provider (AWP) statute or their claims for

damages under the pre-2005 version of this section because: (1) although the providers had asserted their claims in a prior suit, the claims had been dismissed without prejudice pursuant to 28 U.S.C.S. § 1367(c); and (2) the issues raised by the providers in their pending state court suit were different from the issues raised in

prior suits that challenged the validity of the AWP statute. *Ark. Blue Cross & Blue Shield v. St. Vincent Infirmary Med. Ctr.*, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 92101 (E.D. Ark. Dec. 5, 2007), *aff'd*, *Ark. Blue Cross & Blue Shield v. Little Rock Cardiology Clinic, P.A.*, 551 F.3d 812 (8th Cir. 2009).

23-99-209. Applicability.

CASE NOTES

In General.

A permanent injunction barring health care providers who were seeking admittance into an insurer's exclusive provider networks pursuant to the Patient Protection Act was dissolved pursuant to Fed. R. Civ. P. 60(b)(5) after the U.S. Supreme Court held that a similar law in Kentucky

was not preempted by ERISA, on the basis that the Supreme Court decision constituted an extraordinary circumstance. *Prudential Ins. Co. of Am. v. Nat'l Park Med. Ctr., Inc.*, — F. Supp.2d —, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12, 2004), *aff'd in part, reversed in part*, 413 F.3d 897 (8th Cir. 2005).

SUBCHAPTER 4 — ARKANSAS HEALTH CARE CONSUMER ACT

SECTION.

23-99-403. Definitions.

23-99-411. Processing applications of providers.

23-99-417. Coverage required for orthotic devices, orthotic services, prosthetic devices, and prosthetic services.

SECTION.

23-99-418. Coverage for autism spectrum disorders required — Definitions.

23-99-419. Gastric pacemakers.

23-99-420. Prior authorization.

Effective Dates. Acts 2011, No. 196, § 2: Oct. 1, 2011.

23-99-403. Definitions.

As used in this subchapter:

(1) "Acute condition" means a medical condition, illness, or disease having a short and relatively severe course;

(2) "Commissioner" means the Insurance Commissioner;

(3) "Covered person" means a person on whose behalf the health care insurer issuing or delivering the health benefit plan is obligated to pay benefits pursuant to the health benefit plan;

(4)(A) "Health benefit plan" means any individual, blanket, or group plan, policy, or contract for health care services issued or delivered by a health care insurer in this state, including indemnity and managed care plans and including self-insured governmental and church plans, but excluding plans providing health care services pursuant to

Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.

(B) "Health benefit plan" does not include an accident-only, specified disease, hospital indemnity, long-term care, disability income, or other limited-benefit health insurance policy;

(5) "Health care insurer" or "insurer" means any insurance company, hospital and medical service corporation, or health maintenance organization issuing or delivering health benefit plans in this state and subject to the following laws:

(A) The Arkansas Insurance Code;

(B) Section 23-76-101 et seq., pertaining to health maintenance organizations;

(C) Section 23-75-101 et seq., pertaining to hospital and medical service corporations; and

(D) Any successor laws of the foregoing;

(6) "Managed care plan" means a health benefit plan that either requires a covered person to use or creates incentives, including financial incentives, for a covered person to use participating providers;

(7)(A) "Orthotic device" means an external device that is:

(i) Intended to restore physiological function or cosmesis to a patient; and

(ii) Custom-designed, fabricated, assembled, fitted, or adjusted for the patient using the device prior to or concurrent with the delivery of the device to the patient.

(B) "Orthotic device" does not include a cane, a crutch, a corset, a dental appliance, an elastic hose, an elastic support, a fabric support, a generic arch support, a low-temperature plastic splint, a soft cervical collar, a truss, or other similar device that:

(i) Is carried in stock and sold without therapeutic modification by a corset shop, department store, drug store, surgical supply facility, or similar retail entity; and

(ii) Has no significant impact on the neuromuscular, musculoskeletal, or neuromusculoskeletal functions of the body;

(8) "Orthotic service" means the evaluation and treatment of a condition that requires the use of an orthotic device;

(9) "Participating provider" means a provider who or that has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly, from the health care insurer;

(10) "Person" or "entity" means and includes, individually and collectively, any individual, corporation, partnership, firm, trust, association, voluntary organization, or any other form of business enterprise or legal entity;

(11) "Policyholder" means the employer, union, individual, or other person or entity that purchases, issues, or sponsors a health benefit plan;

(12)(A) "Prosthetic device" means an external device that is:

(i) Intended to replace an absent external body part for the purpose of restoring physiological function or cosmesis to a patient; and

(ii) Custom-designed, fabricated, assembled, fitted, or adjusted for the patient using the device prior to or concurrent with being delivered to the patient.

(B) "Prosthetic device" does not include an artificial eye, an artificial ear, a dental appliance, a cosmetic device such as artificial eyelashes or wigs, a device used exclusively for athletic purposes, an artificial facial device, or other device that does not have a significant impact on the neuromuscular, musculoskeletal, or neuromusculoskeletal functions of the body;

(13) "Prosthetic service" means the evaluation and treatment of a condition that requires the use of a prosthetic device;

(14) "Specialty" means a provider's particular area of specialty within his or her licensed scope of practice; and

(15) "Type" of provider means the licensed scope of practice.

History. Acts 1997, No. 1196, § 3; 2009, No. 950, § 1.

Amendments. The 2009 amendment, in (4), inserted (4)(B), redesignated the existing text accordingly, and substituted "self-insured governmental and church plans" for "governmental plans as defined

in 29 U.S.C. § 1002(32)"; inserted (7), (8), (12), and (13), and redesignated the remaining subdivisions accordingly; substituted "purchases, issues, or sponsors a" for "purchases the" in (11); and made minor stylistic changes.

23-99-405. Mastectomies.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Insurance Law, Health Care Providers, 26 U. Ark. Little Rock L. Rev. 479.

Survey of Legislation, 2003 Arkansas General Assembly, Insurance Law, Health Care Providers, 26 U. Ark. Little Rock L. Rev. 479.

23-99-411. Processing applications of providers.

(a)(1)(A) Health care insurers shall establish mechanisms to ensure timely processing of requests for participation or renewal by providers and in making decisions that affect participation status.

(B) These mechanisms shall include, at a minimum, provisions for the provider to receive a written statement of reasons for the health care insurer's denial of a request for initial participation or renewal.

(2)(A) Health care insurers shall make a decision within:

(i) Ninety (90) calendar days from the date of submission of a completed application as defined by rule of the Insurance Commissioner for participation or a request for renewal by a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.; and

(ii) One hundred eighty (180) calendar days from the date of submission of a completed application as defined by rule of the

commissioner for participation or a request for renewal by any other provider.

(B) However, when a physician's credentials are verified through the Arkansas State Medical Board's Centralized Credentials Verification Service under § 17-95-107, the ninety (90) days specified under subdivision (a)(2)(A)(i) of this section is tolled from the date an order is received by the Centralized Credentials Verification Service from the health care insurer until the date the health care insurer receives notification by the Centralized Credentials Verification Service that the file is complete and available for retrieval.

(C)(i) If the information provided by the initial application, the health care insurer's investigation, or the Centralized Credentials Verification Service requires the health care insurer to collect more detailed information from the provider to fairly and responsibly process the application, the time specified under subdivision (a)(2)(A)(i) of this section is tolled and the application is suspended from the date a written request for the information is sent to the provider until the request is fully and completely answered and sent to the health care insurer by the provider.

(ii) If the request is not fully answered within ninety (90) days of the date it was sent, the health care insurer, in its discretion, may treat the application as abandoned and deny it.

(iii) The request and response under this section shall be sent by regular mail or other means of delivery as may be allowed by rules adopted by the commissioner.

(3) If a physician is already credentialed by the health insurer but changes employment or changes location, the health insurer shall only require the submission of such additional information, if any, as is necessary to continue the physician's credentials based upon the changed employment or location.

(4) Health care insurers shall promptly notify providers:

(A) Of any delay in processing applications; and

(B) The reasons for a delay in processing applications.

(5) The commissioner may adopt rules to ensure that covered health care claims submitted by patients or their providers are not negatively affected by delays in processing participation applications.

(6) The commissioner shall adopt rules to implement this subsection.

(b) Nothing in this section shall prevent a provider or a health care insurer from terminating a participating provider contract in accordance with its terms.

History. Acts 1997, No. 1196, § 11; rewrote (a).
2009, No. 350, § 1.

Amendments. The 2009 amendment

23-99-417. Coverage required for orthotic devices, orthotic services, prosthetic devices, and prosthetic services.

(a)(1) Subject to subdivision (a)(2) of this section and subsections (b) and (c) of this section, a health benefit plan that is issued for delivery, delivered, renewed, or otherwise contracted for in this state shall provide coverage for eligible charges within limits of coverage that are no less than eighty percent (80%) of Medicare allowable as defined by the Centers for Medicare & Medicaid Services, Healthcare Common Procedure Coding System as of January 1, 2009, or as of a later date if adopted by rule of the Insurance Commissioner for:

- (A) An orthotic device;
- (B) An orthotic service;
- (C) A prosthetic device; and
- (D) A prosthetic service.

(2) This section does not require coverage for an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service for a replacement that occurs more frequently than one (1) time every three (3) years unless medically necessary or indicated by other coverage criteria.

(b)(1) Eligible charges and limits of or exclusions from coverage under subsection (a) of this section shall be based on medical necessity or the health benefit plan's coverage criteria for other medical services, which may include without limitation:

- (A) The information and recommendation from the treating physician in consultation with the insured; and
- (B) The results of a functional limit test.

(2) As used in this section, "functional limit test" includes without limitation the insured's:

- (A) Medical history, including prior use of orthotic devices or prosthetic devices if applicable;
- (B) Current condition, including the status of the musculoskeletal system and the nature of other medical problems; and
- (C) Desire to:
 - (i) Ambulate with respect to lower-limb orthotic devices or prosthetic devices; or
 - (ii) Maximize upper-limb function with respect to upper-limb orthotic devices or prosthetic devices.

(3) A denial or limitation of coverage based on lack of medical necessity is subject to external review under State Insurance Department Rule 76, the Arkansas External Review Regulation.

(c) A health benefit plan:

(1) May require prior authorization for an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service in the same manner that prior authorization is required for any other covered benefit;

(2) May impose copayments, deductibles, or coinsurance amounts for an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service if the amounts are no greater than the copayments,

deductibles, or coinsurance amounts that apply to other benefits under the health benefit plan;

(3) When the replacement or repair is necessitated by anatomical change or normal use, shall cover the necessary repair and necessary replacement of an orthotic device or a prosthetic device subject to copayments, coinsurance, and deductibles that are no more restrictive than the copayments, coinsurance, and deductibles that apply to other benefits under the plan, unless the repair or replacement is necessitated by misuse or loss; and

(4) Shall include a requirement that an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service be prescribed by a licensed doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine and provided by a doctor of medicine, a doctor of osteopathy, a doctor of podiatric medicine, an orthotist, or a prosthetist licensed by the State of Arkansas.

(d) Coverage of an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service may be made subject to but no more restrictive than the provisions of the health benefit plan that apply to other benefits under the plan.

(e) The commissioner may:

(1) Issue a rule governing payment standards for health benefit plans under subdivision (a)(1) of this section; and

(2) Adopt necessary rules to enforce this section.

History. Acts 2009, No. 950, § 2; 2013, substituted “allowable” for “allowables” in No. 1233, §§ 1, 2. (a)(1); and added (e).

Amendments. The 2013 amendment

23-99-418. Coverage for autism spectrum disorders required — Definitions.

(a) As used in this section:

(1) “Applied behavior analysis” means the design, implementation, and evaluation of environmental modifications by a board-certified behavior analyst using behavioral stimuli and consequences to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior;

(2) “Autism services provider” means a person, entity, or group that provides diagnostic evaluations and treatment of autism spectrum disorders, including licensed physicians, licensed psychiatrists, licensed speech therapists, licensed occupational therapists, licensed physical therapists, licensed psychologists, and board-certified behavior analysts;

(3) “Autism spectrum disorder” means any of the pervasive developmental disorders as defined by the most recent edition of the “Diagnostic and Statistical Manual of Mental Disorders”, including:

(A) Autistic disorder;

(B) Asperger’s disorder; and

(C) Pervasive developmental disorder not otherwise specified;

(4) “Board-certified behavior analyst” means an individual certified by the nationally accredited Behavior Analyst Certification Board, a nationally accredited nongovernmental agency that certifies individuals who have completed academic, examination, training, and supervision requirements in applied behavior analysis;

(5)(A) “Diagnosis” means medically necessary assessment, evaluations, or tests to diagnose whether or not an individual has an autism spectrum disorder.

(B) Diagnostic evaluations do not need to be completed concurrently to diagnose autism spectrum disorder;

(6) “Evidence-based treatment” means treatment subject to research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to autism spectrum disorders;

(7)(A) “Health benefit plan” means any group or blanket plan, policy, or contract for health care services issued or delivered in this state by health care insurers, including indemnity and managed care plans and the plans providing health benefits to state and public school employees under § 21-5-401 et seq., but excluding individual major medical plans and plans providing health care services under Arkansas Constitution, Article 5, § 32, the Workers’ Compensation Law, § 11-9-101 et seq., and the Public Employee Workers’ Compensation Act, § 21-5-601 et seq.

(B) “Health benefit plan” does not include an accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, disability income, or other limited benefit health insurance policy;

(8) “Health care insurer” means any insurance company, hospital and medical service corporation, or health maintenance organization issuing or delivering health benefit plans in this state and subject to any of the following laws:

(A) The insurance laws of this state;

(B) Section 23-75-101 et seq., pertaining to hospital and medical service corporations; and

(C) Section 23-76-101 et seq., pertaining to health maintenance organizations;

(9) “Medically necessary” means reasonably expected to do the following:

(A) Prevent the onset of an illness, condition, injury, or disability;

(B) Reduce or ameliorate the physical, mental, or developmental effects of an illness, condition, injury, or disability; or

(C) Assist to achieve or maintain maximum functional capacity in performing daily activities, taking into account both the functional capacity of the individual and the functional capacities that are appropriate for individuals of the same age;

(10) “Pharmacy care” means medications prescribed by a licensed physician and any health-related services deemed medically necessary to determine the need or effectiveness of the medications;

(11) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices;

(12) "Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices;

(13) "Therapeutic care" means services provided by licensed speech therapists, occupational therapists, or physical therapists; and

(14) "Treatment" includes:

(A) The following care prescribed, provided, or ordered for a specific individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist who determines the care to be medically necessary and evidence-based, including without limitation:

(i) Applied behavior analysis when provided by or supervised by a board-certified behavior analyst;

(ii) Pharmacy care;

(iii) Psychiatric care;

(iv) Psychological care;

(v) Therapeutic care; and

(vi) Equipment determined necessary to provide evidence-based treatment; and

(B) Any care for an individual with autism spectrum disorder that is determined by a licensed physician to be:

(i) Medically necessary; and

(ii) Evidence-based.

(b) To the extent that the diagnosis and treatment of autism spectrum disorders are not already covered by a health benefit plan, coverage under this section shall be included in a health benefit plan that is delivered, executed, issued, amended, adjusted, or renewed in this state on or after October 1, 2011.

(c) Applied behavior analysis services shall:

(1) Have an annual limitation of fifty thousand dollars (\$50,000); and

(2) Be limited to children under eighteen (18) years of age.

(d)(1) The coverage required by this section is not subject to:

(A) Any limits on the number of visits an individual may make to an autism services provider; or

(B) Dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to a physical illness generally under a health benefit plan.

(2) The coverage may be subject to other general exclusions and limitations of the health insurance plan, including without limitation coordination of benefits, participating provider requirements, restrictions on services provided by family or household members, and utilization review of health care services, including review of medical necessity, case management, and other managed care provisions.

(e) This section does not limit benefits that are otherwise available to an individual under a health benefit plan.

(f) Coverage for treatment under this section shall not be denied on the basis that the treatment is habilitative in nature.

(g)(1) If an individual is receiving treatment for an autism spectrum disorder, an insurer shall not request a review of the medical necessity of the treatment for autism spectrum disorder to a greater extent than it does for other illnesses covered in the policy.

(2) The cost of obtaining the review shall be borne by the insurer.

(h)(1) This section shall not be construed as affecting any obligation to provide services to an individual under an individualized family service plan, an individualized education program under the Individuals with Disabilities Education Act, or an individualized service plan.

(2) In accordance with the Individuals with Disabilities Education Act, nothing in this section relieves an insurer from an otherwise valid obligation to provide or to pay for services provided to an individual with a disability.

(i) On and after January 1, 2014:

(1) To the extent that this section requires benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered by a health care insurer in this state through the state medical exchange; and

(2) This section continues to apply to plans offered outside the state medical exchange.

History. Acts 2011, No. 196, § 1.

A.C.R.C. Notes. Acts 2013, No. 1371, § 16, provided: "AUTISM TREATMENT AND COORDINATION. The Department of Human Services — Division of Developmental Disabilities Services shall promulgate rules and regulations regarding the licensure and oversight of Applied

Behavior Analysts as described in Arkansas Code § 23-99-418. The rules and regulations shall include a requirement for a licensure application fee equal to that charged to applicants to be licensed as a psychologist as described in Arkansas Code § 17-97-309. Proceeds from this fee are declared as cash funds."

23-99-419. Gastric pacemakers.

(a) As used in this section:

(1) "Gastric pacemaker" means a medical device that:

(A) Uses an external programmer and implanted electrical leads to the stomach; and

(B) Transmits low-frequency, high-energy electrical stimulation to the stomach to entrain and pace the gastric slow waves to treat gastroparesis; and

(2)(A) "Gastroparesis" means a neuromuscular stomach disorder in which food empties from the stomach more slowly than normal.

(B) In most people, undigested food moves from the stomach into the duodenum and small intestine within two (2) to four (4) hours after eating.

(C) In contrast, a patient who has gastroparesis will retain a significant amount of food in his or her stomach hours after eating.

(D) A patient with gastroparesis experiences a variety of upper gastrointestinal symptoms that prevents him or her from eating normally and that may lead to dehydration, weight loss, and eventually life-threatening electrolyte imbalances and malnutrition.

(E) Moreover, delayed stomach emptying interferes with oral drug absorption and, in patients with diabetes mellitus, prevents effective control of blood glucose levels.

(F) The Enterra Therapy for gastroparesis received humanitarian device exemption approval from the United States Food and Drug Administration in March 2000.

(G) The humanitarian device exemption authorizes Medtronic to market Enterra Therapy for the treatment of chronic intractable, drug-refractory, nausea and vomiting secondary to gastroparesis of diabetic or idiopathic etiology.

(H) The effectiveness of Enterra Therapy for this use has not been demonstrated.

(I) Enterra Therapy may be used only in medical centers in which an institutional review board has approved use of the device.

(J)(i) When the battery in a neurostimulator runs down, the physician will obtain prior authorization from the health insurance company and approval for a replacement surgery and then schedule a procedure.

(ii) During the surgery, the physician will remove the neurostimulator and implant a new one.

(iii) The implanted leads will also be checked to make sure they are working properly.

(iv) If the leads are working properly, the new neurostimulator will be connected to the leads that are already in place.

(v) If the leads are not working as they should be, they will also be replaced.

(b) Except as provided under subsection (c) or subsection (d) of this section, a health benefit plan that is issued for delivery, delivered, renewed, or otherwise contracted for in this state shall provide coverage for gastric pacemakers.

(c) Eligible charges and limits of or exclusions from coverage under subsection (b) of this section shall be based on medical necessity or the health benefit plan's coverage criteria for other medical services.

(d) A health benefit plan may:

(1) Require prior authorization for a gastric pacemaker in the same manner that prior authorization is required for any other covered benefit; and

(2) Impose copayments, deductibles, or coinsurance amounts for a gastric pacemaker if the amounts are no greater than the copayments, deductibles, or coinsurance amounts that apply to other benefits under the health benefit plan.

History. Acts 2011, No. 1042, § 1.

23-99-420. Prior authorization.

(a) As used in this section:

(1) "Fail first" means a protocol by a health care insurer requiring that a health care service preferred by a health care insurer shall fail to help a patient before the patient receives coverage for the health care service ordered by the patient's health care provider;

(2) "Health benefit plan" means any individual, blanket, or group plan, policy, or contract for health care services issued or delivered by a health care insurer in the state;

(3)(A) "Health care insurer" means an insurance company, a health maintenance organization, and a hospital and medical service corporation.

(B) "Health care insurer" does not include workers' compensation plans or Medicaid;

(4) "Health care provider" means a doctor of medicine, a doctor of osteopathy, or another health care professional acting within the scope of practice for which he or she is licensed;

(5) "Health care service" means a health care procedure, treatment, service, or product, including without limitation prescription drugs and durable medical equipment ordered by a health care provider;

(6) "Medicaid" means the state-federal medical assistance program established by Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq.;

(7) "Prior authorization" means the process by which a health care insurer or a health care insurer's contracted private review agent determines the medical necessity or medical appropriateness, or both, of otherwise covered health care services before the rendering of the health care services, including without limitation:

(A) Preadmission review;

(B) Pretreatment review;

(C) Utilization review;

(D) Case management; and

(E) Any requirement that a patient or health care provider notify the health care insurer or a utilization review agent before providing a health care service;

(8)(A) "Private review agent" means a nonhospital-affiliated person or entity performing utilization review on behalf of:

(i) An employer of employees in the State of Arkansas; or

(ii) A third party that provides or administers hospital and medical benefits to citizens of this state, including:

(a) A health maintenance organization issued a certificate of authority under and by virtue of the laws of the State of Arkansas; and

(b) A health insurer, nonprofit health service plan, health insurance service organization, or preferred provider organization or other entity offering health insurance policies, contracts, or benefits in this state.

(B) "Private review agent" includes a health care insurer if the health care insurer performs prior authorization determinations.

(C) "Private review agent" does not include automobile, homeowner, or casualty and commercial liability insurers or their employees, agents, or contractors;

(9) "Step therapy" means a protocol by a health care insurer requiring that a patient not be allowed coverage of a prescription drug ordered by the patient's health care provider until other less expensive drugs have been tried; and

(10) "Self-insured health plan for employees of governmental entity" means a trust established under §§ 14-54-101 and 25-20-104 to provide benefits such as accident and health benefits, death benefits, dental benefits, and disability income benefits.

(b) The purpose of this section is to ensure that prior authorization determination protocols safeguard a patient's best interests.

(c)(1) An adverse prior authorization determination made by a utilization review agent shall be based on the medical necessity or appropriateness of the health care services and shall be based on written clinical criteria.

(2) An adverse prior authorization determination shall be made by a qualified health care professional.

(d) This section applies to a health care insurer whether or not the health care insurer is acting directly or indirectly or through a private review agent and to a self-insured health plan for employees of governmental entities. However, a self-insured plan for employees of governmental entities is not subject to subdivision (g)(4)(C) of this section or oversight by the Arkansas State Medical Board, State Board of Health, or the State Insurance Department.

(e) If the patient or the patient's health care provider, or both, receive verbal notification of the adverse prior authorization determination, the qualified health care professional who makes an adverse prior authorization determination shall provide the information required for the written notice under subdivision (g)(1) of this section.

(f) Written notice of an adverse prior authorization determination shall be provided to the patient's health care provider requesting the prior authorization by fax or hard copy letter sent by regular mail, as requested by the patient's health care provider.

(g) The written notice required under subsection (e) of this section shall include:

(1)(A) The name, title, address, and telephone number of the health care professional responsible for making the adverse determination.

(B) For a physician, the notice shall identify the physician's board certification status or board eligibility.

(C) The notice under this subsection shall identify each state in which the health care professional is licensed and the license number issued to the professional by each state;

(2) The written clinical criteria, if any, and any internal rule, guideline, or protocol on which the health care insurer relied when

making the adverse prior authorization determination and how those provisions apply to the patient's specific medical circumstance;

(3) Information for the patient and the patient's health care provider through which the patient or health care provider may request a copy of any report developed by personnel performing the utilization review that led to the adverse prior authorization determination; and

(4)(A) Information explaining to the patient and the patient's health care provider the right to appeal the adverse prior authorization determination.

(B) The information required under subdivision (g)(4)(A) of this section shall include instructions concerning how an appeal may be perfected and how the patient and the patient's health care provider may ensure that written materials supporting the appeal will be considered in the appeal process.

(C) The information required under subdivision (g)(4)(A) of this section shall include addresses and telephone numbers to be used by health care providers and patients to make complaints to the Arkansas State Medical Board, the State Board of Health, and the State Insurance Department.

(h)(1) When a health care service for the treatment or diagnosis of any medical condition is restricted or denied for use by prior authorization or step therapy or a fail first protocol in favor of a health care service preferred by the health care insurer, the patient's health care provider shall have access to a clear and convenient process to expeditiously request an override of that restriction or denial from the health care insurer.

(2) Upon request, the patient's health care provider shall be provided contact information, including a phone number, for the person or persons who should be contacted to initiate the request for an expeditious override of the restriction or denial.

(i) Requested health care services shall be deemed preauthorized if a health care insurer or self-insured health plan for employees of governmental entities fails to comply with this section.

(j)(1) On and after January 1, 2014, to establish uniformity in the submission of prior authorization forms, a health care insurer shall utilize only a single standardized prior authorization form for obtaining a prior authorization in written or electronic form for prescription drug benefits.

(2) A health care insurer may make the form required under subdivision (j)(1) of this section accessible through multiple computer operating systems.

(3) The prior authorization form required under subdivision (j)(1) of this section shall:

(A) Not exceed two (2) pages; and

(B) Be designed to be submitted electronically from a prescribing provider to a health care insurer.

(4) This subsection does not prohibit a prior authorization by verbal means without a form.

(5) If a health care insurer fails to use or accept the prior authorization form developed under this subsection or fails to respond as soon as reasonably possible but no later than seventy-two (72) hours after receipt of a completed prior authorization request using the form developed under this subsection, the prior authorization request is granted.

(6)(A) On and after January 1, 2014, each health care insurer shall submit its prior authorization form to the State Insurance Department to be kept on file.

(B) A copy of a subsequent replacement or modification of a health care insurer's prior authorization form shall be filed with the department within fifteen (15) days before the prior authorization form is used or before implementation of the replacement or modification.

History. Acts 2011, No. 1155, § 1; 2013, No. 338, § 1.

Amendments. The 2013 amendment added (j).

SUBCHAPTER 5 — ARKANSAS MENTAL HEALTH PARITY ACT OF 2009

SECTION.

23-99-501. Short title.

23-99-502. Legislative findings and intent.

23-99-503. Definitions.

23-99-504. Exclusions.

23-99-505. Increased cost exemption.

SECTION.

23-99-506. Parity requirements.

23-99-507. Medical necessity.

23-99-508. Permitted provisions.

23-99-509. Applicability.

23-99-512. Out-of-network providers.

23-99-501. Short title.

This subchapter shall be known and may be cited as the “Arkansas Mental Health Parity Act of 2009”.

History. Acts 1997, No. 1020, § 1; 2009, No. 1193, § 1.

Amendments. The 2009 amendment inserted “of 2009.”

23-99-502. Legislative findings and intent.

It is the intent of this state that if a health benefit plan provides insurance coverage for a mental illness or substance abuse disorder, the treatment of the mental illness or substance abuse disorder shall be as available as and at parity with that for other medical illnesses.

History. Acts 1997, No. 1020, § 2; 2009, No. 1193, § 2.

Amendments. The 2009 amendment rewrote the section.

23-99-503. Definitions.

As used in this subchapter:

(1) “Carve-out arrangement” means an arrangement in which a health care insurer contracts with a separate person or entity to arrange for the delivery of specific types of health care benefits under a health benefit plan;

- (2) “Commissioner” means the Insurance Commissioner;
- (3) “Financial requirements” means copayments, deductibles, out-of-network charges, out-of-pocket contributions or fees, annual limits, lifetime aggregate limits imposed on individual patients, and other patient cost-sharing amounts;
- (4) “Health benefit plan” means any group or blanket plan, policy, or contract for health care services issued or delivered in this state by health care insurers, including indemnity and managed care plans and the plans providing health benefits to state and public school employees pursuant to § 21-5-401 et seq., but excluding plans providing health care services pursuant to Arkansas Constitution, Article 5, § 32, the Workers’ Compensation Law, § 11-9-101 et seq., and the Public Employee Workers’ Compensation Act, § 21-5-601 et seq.;
- (5) “Health care insurer” means any insurance company, hospital and medical service corporation, or health maintenance organization issuing or delivering health benefit plans in this state and subject to any of the following laws:
- (A) The Arkansas Insurance Code;
 - (B) Section 23-75-101 et seq., pertaining to hospital and medical service corporations;
 - (C) Section 23-76-101 et seq., pertaining to health maintenance organizations; and
 - (D) Any successor law of the foregoing;
- (6)(A) “Mental illnesses” and “substance use disorders” mean those illnesses and disorders that are covered by a health benefit plan listed in the International Classification of Diseases Manual and the Diagnostic and Statistical Manual of Mental Disorders.
- (B) Unless specifically otherwise stated, “mental illness” includes substance use disorders;
- (7) “Person” or “entity” means and includes, individually and collectively, any individual, corporation, partnership, firm, trust, association, voluntary organization, or any other form of business enterprise or legal entity; and
- (8) “Small employer” means any person or entity actively engaged in business who, on at least fifty percent (50%) of its working days during the preceding year, employed no more than fifty (50) eligible employees.

History. Acts 1997, No. 1020, § 3; 2009, No. 1193, §§ 3, 4.

Amendments. The 2009 amendment, in (4), inserted “and the plans providing health benefits to state and public school employees pursuant to § 21-5-401 et seq.” and deleted “to state employees or” follow-

ing “services”; inserted (6)(B), redesignated the existing text accordingly, and in (6)(A), substituted “substance abuse disorders” for “developmental disorders” and inserted “that are covered by a health benefit plan.”

23-99-504. Exclusions.

This subchapter does not apply to:

- (1) Dental insurance plans;
- (2) Vision insurance plans;

- (3) Specified-disease insurance plans;
- (4) Accidental injury insurance plans;
- (5) Long-term care plans;
- (6) Disability income plans;
- (7) Individual health benefit plans if the health care insurers offer individuals who satisfy the health care insurer's underwriting standards the option of purchasing a plan that, other than being optional, meets all the other requirements of this subchapter;
- (8) Health benefit plans for small employers if the health care insurers offer purchasers the option of purchasing a plan that, other than being optional, meets all the other requirements of this subchapter; and
- (9) Medicare supplement plans, as subject to section 1882(g)(1) of the Social Security Act.

History. Acts 1997, No. 1020, § 8; 2009, No. 1193, § 5.

Amendments. The 2009 amendment substituted "if the health care insurers offer" for "provided that health care insur-

ers shall offer" in (7) and (8); inserted "who satisfy the health care insurer's underwriting standards" in (8); and made related and minor stylistic changes.

23-99-505. Increased cost exemption.

(a)(1) This subchapter does not apply to a health benefit plan during the health benefit plan's following health benefit plan year if the application of this subchapter to the health benefit plan in a health benefit plan year resulted in an increase in the actual costs of coverage with respect to medical and surgical benefits and mental illness benefits under the health benefit plan as determined and certified under subsection (b) of this section by an amount that exceeds:

(A) Two percent (2%) for the first health benefit plan year in which this section is applied; or

(B) One percent (1%) for each subsequent health benefit plan year.

(2) The exemption provided by subdivision (a)(1) of this section applies to a health benefit plan for one (1) year.

(3) A health care insurer may elect to continue to apply mental health parity under this subchapter to its health benefit plans regardless of any increase in its total costs of coverage.

(b)(1) A determination under this section of increases to the actual costs of coverage of a health benefit plan shall be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries.

(2) The determination shall be in a written report prepared by the actuary.

(3) The report and all underlying documentation relied upon by the actuary shall be maintained by the health care insurer for a period of six (6) years following the notification required by subsection (d) of this section.

(c) To obtain an exemption under this section, a health care insurer shall make the increased cost determination required by this section

after the health benefit plan has complied with this section for the first six (6) months of the health benefit plan year.

(d)(1) A health care insurer that elects to claim an exemption for a qualifying health benefit plan under this section based upon a certification under subsection (b) of this section shall promptly notify the Insurance Commissioner, the policyholder or contract holder, and the certificate holders, subscribers, and enrollees covered by the health benefit plan of its election.

(2) The notification to the commissioner under subdivision (d)(1) of this section shall include:

(A) A description of the number of covered lives under the health benefit plan at the time of the notification and, if applicable, at the time of any prior election of the increased cost exemption under this section; and

(B) For the current and previous health benefit plan year:

(i) A description of the actual total costs of coverage for medical and surgical benefits and mental illness benefits under the health benefit plan; and

(ii) The actual total costs of coverage with respect to mental illness benefits under the health benefit plan.

(3)(A) A notification under this subsection is confidential.

(B) The commissioner shall make available upon request, but not more than annually, an anonymous itemization of notifications under this section that includes a summary of the data received under subdivision (d)(2) of this section.

(e) To determine compliance with this section, the commissioner may audit the books and records of a health care insurer relating to an exemption, including without limitation any actuarial reports prepared pursuant to subsection (b) of this section during the six-year period following the notification required by subsection (d) of this section.

(f) The commissioner may promulgate rules to implement this section.

History. Acts 1997, No. 1020, § 9; Acts 2009, No. 1193, § 6.

striking through the language to indicate its repeal.

A.C.R.C. Notes. The amendment of this section by Acts 2009, No. 1193, § 6, omitted former subsection (b) without

Amendments. The 2009 amendment rewrote (a); and added (b) through (f).

23-99-506. Parity requirements.

(a) Except as provided in § 23-99-504, a health benefit plan that provides benefits for the diagnosis and treatment of mental illnesses shall provide the benefits under the same terms and conditions as provided for covered benefits offered under the health benefit plan for the treatment of other medical illnesses and conditions, including without limitation:

- (1) The duration or frequency of coverage;
- (2) The dollar amount of coverage; or
- (3) Financial requirements.

(b) This subchapter does not:

(1) Require equal coverage between treatments for a mental illness with coverage for preventive care;

(2) Prohibit a health care insurer from:

(A) Negotiating separate reimbursement rates and service delivery systems, including without limitation a carve-out arrangement;

(B) Managing the provision of mental health benefits for mental illnesses by common methods used for other medical conditions, including without limitation preadmission screening, prior authorization of services, or other mechanisms designed to limit coverage of services or mental illnesses to mental illnesses that are deemed medically necessary;

(C) Limiting covered services to covered services authorized by the health benefit plan, if the limitations are made in accordance with this subchapter;

(D) Using separate but equal cost-sharing features for mental illnesses; or

(E) Using a single lifetime or annual dollar limit as applicable to other medical illness; and

(3) Include a Medicare or Medicaid plan or contract or any privatized risk or demonstration program for Medicare or Medicaid coverage.

History. Acts 1997, No. 1020, § 4; 2009, No. 1193, § 7.

A.C.R.C. Notes. The amendment of this section by Acts 2009, No. 1193, § 7, omitted "or developmental disorders as for other medical illness" at the end of former subdivision (c)(2)(D) without striking through the language to indicate its repeal.

Amendments. The 2009 amendment rewrote (a) and (b), redesignated them as

present (a), and redesignated the subsequent subsection accordingly; in (b)(2)(B), deleted "and the mental health treatment of those with developmental disorders" following "benefits for mental illnesses," and substituted "services or mental illnesses" for "and developmental disorders"; in (b)(2)(C), substituted "benefit plan" for "insurance policy"; and made minor stylistic changes.

23-99-507. Medical necessity.

(a) The criteria for medical necessity determinations for mental illness made under a health benefit plan shall be made available by the health care insurer in accordance with rules established by the Insurance Commissioner to any current or potential covered individual or contracting provider upon request.

(b) On request, the reason for a denial of reimbursement or payment for services to diagnose or treat mental illness under a health benefit plan shall be made available by the health care insurer to a covered individual in accordance with the rules of the commissioner.

History. Acts 1997, No. 1020, § 5; 2009, No. 1193, § 8.

Amendments. The 2009 amendment rewrote the section.

23-99-508. Permitted provisions.

(a) A health care insurer may at the insurer's option provide coverage for a health service, such as intensive case management, community residential treatment programs, or social rehabilitation programs, that is used in the treatment of mental illnesses but is generally not used for other injuries, illnesses, and conditions if the other requirements of this subchapter are met.

(b) Health care insurers providing educational remediation may, but are not required to, comply with the terms of this subchapter in regard to the treatment or remediation.

(c) A health care insurer may provide coverage for a health service, including without limitation physical rehabilitation or durable medical equipment, which generally is not used in the diagnosis or treatment of serious mental illnesses but is used for other injuries, illnesses, and conditions if the other requirements of this subchapter are met.

(d) A health care insurer may utilize common utilization management protocols, including without limitation preadmission screening, prior authorization of service, or other mechanisms designed to limit coverage of service for mental illness to individuals whose diagnosis or treatment coverage is considered medically necessary although the protocols are not used in conjunction with other medical illnesses or conditions covered by the health benefit plan.

History. Acts 1997, No. 1020, § 6; 2009, No. 1193, § 9.

Amendments. The 2009 amendment deleted "or developmental disorders" fol-

lowing "mental illnesses" in (a); deleted "chemical dependency treatment or" following "providing" in (b); added (d); and made related and minor stylistic changes.

23-99-509. Applicability.

(a) On or after October 3, 2009, this subchapter shall apply to health benefit plans on the health benefit plans' anniversaries or start dates but in no event later than one (1) year after October 3, 2009.

(b) If a health benefit plan provides coverage or benefits to an Arkansas resident, the health benefit plan shall be deemed to be delivered in this state within the meaning of this subchapter, regardless of whether the health care insurer or other entity that provides the coverage is located within or outside Arkansas.

History. Acts 1997, No. 1020, § 7; 2009, No. 1193, § 10.

Amendments. The 2009 amendment

substituted "October 3, 2009" for "August 1, 1997" twice in (a); and inserted "health benefit" in (a) and (b).

23-99-512. Out-of-network providers.

In the case of a health benefit plan that provides both medical benefits and mental illness benefits, if the health benefit plan provides coverage for medical benefits provided by out-of-network providers, the health benefit plan shall provide coverage for mental illness benefits provided by out-of-network providers pursuant to this subchapter.

History. Acts 2009, No. 1193, § 11.

SUBCHAPTER 8 — ENFORCEMENT OF ANY WILLING PROVIDER LAWS

SECTION.

23-99-801. Application and intent.

23-99-802. Definitions.

SECTION.

23-99-803. Agency enforcement.

A.C.R.C. Notes. Acts 2005, No. 490, the Patient Protection Act of 2005, will not become effective pursuant to section 2 of that act because the 8th Circuit Court of Appeals affirmed the part of the district court ruling that dissolved the permanent injunction barring enforcement of the Patient Protection Act of 1995, § 23-99-201 et seq., as it applies to health insurers of private, insured ERISA plans. See *Prudential Ins. Co. of Am. v. Nat'l Park Med. Ctr., Inc.*, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12, 2004), *aff'd in part, rev'd in part*, and remanded, No. 04-1465 (8th Cir. June 29, 2005).

Acts 2005, No. 491, §§ 1 and 2, provided: "SECTION 1. Civil penalties. To the extent permitted by ERISA, the federal Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., any person adversely affected by a violation of the Patient Protection Act of 2005 may sue in a court of competent jurisdiction for injunctive relief against the health insurer and, upon prevailing, shall, in addition to injunctive relief, recover damages of not less than one thousand dollars (\$1,000), attorney's fees, and costs.

"SECTION 2. Validity and construction.

"(a) A health benefit plan delivered or issued for delivery to any person in this state in violation of the Patient Protection Act of 2005 but otherwise binding on the health insurer, shall be held valid, but shall be construed as provided in the Patient Protection Act of 2005.

"(b) Any health benefit plan or related policy, rider, or endorsement issued and otherwise valid that contains any condition, omission, or provision not in compliance with the requirements of the Patient Protection Act of 2005 shall not be rendered invalid because of the noncompliance, but shall be construed and applied

in accordance with such condition, omission, or provision as would have applied if it had been in full compliance with the Patient Protection Act of 2005."

Acts 2005, No. 491, § 7, provided: "Sections 3, 4, 5 and 6 of this Act shall take effect and apply to any of the state's any willing provider laws regardless of whether the Patient Protection Act of 2005 becomes effective."

Acts 2005, No. 960, § 1, provided: "23-99-207. Civil penalties. To the extent permitted by ERISA, the federal Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., any provider adversely affected by a violation of this subchapter may sue in a circuit court only for injunctive relief against the health care insurer but not damages. The prevailing party shall be allowed a reasonable attorney's fee and costs."

Acts 2005, No. 2238, § 2, provided: "(4) 'Health care provider' or 'provider' means an individual or entity licensed by the State of Arkansas to provide health care services, limited to the following types of providers:

- "(A) Advanced practice nurses;
- "(B) Athletic trainers;
- "(C) Audiologists;
- "(D) Certified orthotists;
- "(E) Chiropractors;
- "(F) Community mental health centers or clinics;
- "(G) Dentists;
- "(H) Home health care providers;
- "(I) Hospice care providers;
- "(J) Hospital-based services;
- "(K) Hospitals;
- "(L) Licensed ambulatory surgery centers;
- "(M) Licensed certified social workers;
- "(N) Licensed dietitians;
- "(O) Licensed durable medical equipment providers;
- "(P) Licensed professional counselors;
- "(Q) Licensed psychological examiners;

“(R) Long-term care facilities;
“(S) Occupational therapists;
“(T) Optometrists
“(U) Pharmacists;
“(V) Physical therapists;
“(W) Physicians and surgeons (M.D.
and D.O.);
“(X) Podiatrists;
“(Y) Prosthetists;
“(Z) Psychologists;

“(AA) Respiratory therapists;
“(BB) Rural health clinics;
“(CC) Speech pathologists; and
“(DD) Other health care practitioners
as determined by the department in rules
promulgated under the Arkansas Admin-
istrative Procedure Act, § 25-15-201 et
seq.; and”

Cross References. Patient Protection
Act of 1995, § 23-99-201 et seq.

23-99-801. Application and intent.

(a) The state’s any willing provider laws shall not be construed:

(1) To require all physicians or a percentage of physicians in the state or a locale to participate in the provision of services for a health maintenance organization; or

(2) To take away the authority of health maintenance organizations that provide coverage of physician services to set the terms and conditions for participation by physicians, though health maintenance organizations shall apply the terms and conditions in a nondiscriminatory manner.

(b)(1) The state’s any willing provider laws shall apply to:

(A) All health insurers, regardless of whether they are providing insurance, including prepaid coverage, or administering or contracting to provide provider networks; and

(B) All multiple-employer welfare arrangements and multiple-employer trusts.

(2) This subsection shall apply only to the extent permitted by ERISA, the federal Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.

(c)(1) The state’s any willing provider laws shall be construed to include within their provider definitions all those providers of the same class or classes who are:

(A) Practicing or operating within a border city in an adjoining state; and

(B) Licensed or authorized to practice or operate by the adjoining state, regardless of whether the provider is licensed or otherwise authorized to operate in Arkansas.

(2) As used in this section, “border city” means a city in a state adjoining Arkansas which adjoins the Arkansas state line and is not separated from an Arkansas city only by a navigable river.

(d)(1) As clarification, nothing in the state’s any willing provider laws shall be construed to cover or regulate health care provider networks offered by noninsurers.

(2) If an employer sponsoring a self-insured health benefit plan contracts directly with providers or contracts for a health care provider network through a noninsurer, then the any willing provider law does not apply.

(3) If a health insurer subcontracts with a noninsurer whose health care network does not meet the requirements of the any willing provider law, then the noninsurer may create a separate health care provider network that meets the requirements of the any willing provider law.

(4) If the noninsurer chooses not to create the separate health care provider network, then the responsibility for compliance with the any willing provider law is the obligation of the health insurer to the extent permitted by ERISA, the federal Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.

(e) Notwithstanding the provisions of subsection (d) of this section, the Patient Protection Act of 1995, § 23-99-201 et seq., and this subchapter apply to a health benefit plan provided by the State of Arkansas to state employees and public school personnel under § 21-5-401 et seq., whether self-funded or insured.

History. Acts 2005, No. 491, § 4; 2009, No. 702, § 1.

Amendments. The 2009 amendment added (e).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Public Health and Welfare, 28 U. Ark. Little Rock L. Rev. 389.

23-99-802. Definitions.

As used in this subchapter:

(1) “Any willing provider law” means a law that prohibits discrimination against a provider willing to meet the terms and conditions for participation established by a health insurer or that otherwise precludes an insurer from prohibiting or limiting participation by a provider who is willing to accept a health insurer’s terms and conditions for participation in the provision of services through a health benefit plan;

(2) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.;

(3) “Health benefit plan” means any health insurance policy or certificate, health maintenance organization contract, hospital and medical service corporation contract or certificate, a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., or any health benefit plan that affects the rights of an Arkansas insured and bears a reasonable relation to Arkansas, whether delivered or issued for delivery in Arkansas;

(4) “Health care provider” or “provider” means those individuals or entities licensed by the State of Arkansas to provide health care services, limited to the following:

(A) Advanced practice nurses;

(B) Athletic trainers;

- (C) Audiologists;
- (D) Certified orthotists;
- (E) Chiropractors;
- (F) Community mental health centers or clinics;
- (G) Dentists;
- (H) Home health care;
- (I) Hospice care;
- (J) Hospital-based services;
- (K) Hospitals;
- (L) Licensed ambulatory surgery centers;
- (M) Licensed certified social workers;
- (N) Licensed dietitians;
- (O) Licensed durable medical equipment providers;
- (P) Licensed professional counselors;
- (Q) Licensed psychological examiners;
- (R) Long-term care facilities;
- (S) Occupational therapists;
- (T) Optometrists;
- (U) Pharmacists;
- (V) Physical therapists;
- (W) Physicians and surgeons (M.D. and D.O.);
- (X) Podiatrists;
- (Y) Prosthetists;
- (Z) Psychologists;
- (AA) Respiratory therapists;
- (BB) Rural health clinics;
- (CC) Speech pathologists; and

(DD) Other health care practitioners as determined by the department in regulations promulgated under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(5) "Health insurer" or "health care insurer" means any entity that is authorized by the State of Arkansas to offer or provide health benefit plans, policies, subscriber contracts, or any other contracts of a similar nature which indemnify or compensate health care providers for the provision of health care services;

(6) "Noninsurer" means an entity that is not required to obtain authorization from the department to do business as a health insurer but that does have a provider network; and

(7) "Self-insured" includes self-funded and vice versa.

History. Acts 2005, No. 491, § 5; 2005, No. 2238, § 3.

23-99-803. Agency enforcement.

The Insurance Commissioner shall:

(1) Enforce the state's any willing provider laws using powers granted to the commissioner in the Arkansas Insurance Code; and

(2) Be entitled to seek an injunction against a health insurer in a court of competent jurisdiction.

History. Acts 2005, No. 491, § 3.

Publisher's Notes. The Arkansas Insurance Code, referred to in this section,

was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

CHAPTER 100

STATE INSURANCE DEPARTMENT CRIMINAL INVESTIGATION DIVISION TRUST FUND ACT

SECTION.

23-100-101. Title.

23-100-102. Insurers' payment extensions — Penalties for non-compliance — Insurance Commissioner's waiver for impaired or insolvent insurers.

23-100-103. State Insurance Department Criminal Investigation Division Trust Fund — Creation.

SECTION.

23-100-104. Antifraud assessment.

23-100-105. Insurers' antifraud fees — Deposit into State Insurance Department Criminal Investigation Division Trust Fund.

23-100-107. State Insurance Department Criminal Investigation Division Trust Fund — Department vouchers and Auditor of State warrants.

23-100-101. Title.

This chapter shall be known as the "State Insurance Department Criminal Investigation Division Trust Fund Act".

History. Acts 1997, No. 337, § 1; 2005, No. 1697, § 25.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination

of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

23-100-102. Insurers' payment extensions — Penalties for non-compliance — Insurance Commissioner's waiver for impaired or insolvent insurers.

(a)(1) The Insurance Commissioner may grant any licensed insurer an extension for payment of the antifraud assessment for good cause shown, upon written application of the licensed insurer received at the State Insurance Department on or before each annual due date.

(2) Absent the commissioner's approval of such an extension for good cause, licensed insurers failing timely to pay the antifraud assessment shall be subject to a penalty of one hundred dollars (\$100) per day for

each day of delinquency, payable to the State Insurance Department Criminal Investigation Division Trust Fund.

(3)(A) The commissioner may pursue any appropriate legal remedies to collect the antifraud assessments and penalties due and unpaid from any insurer.

(B) Further, the commissioner in his or her discretion may order suspension of the delinquent insurer's Arkansas certificate of authority after notice and hearing until the payment of all such antifraud assessments and penalties is remitted to the fund.

(C) Absent grant of the commissioner's waiver for good cause shown, the commissioner may revoke the Arkansas certificate of authority of any delinquent insurer consistently refusing and failing without good cause to remit payment of these antifraud assessments and penalties to the fund pursuant to this section.

(b)(1) The commissioner in his or her discretion may waive all or any part of the antifraud assessment due annually from a licensed insurer upon the:

(A) Suspension or revocation of the insurer's Arkansas certificate of authority;

(B) Issuance of a court order placing the company into conservation, rehabilitation, or liquidation in any state; or

(C) Commissioner's finding that the insurer is impaired or insolvent.

(2) Upon the reinstatement or activation of the insurer's certificate of authority in good standing, the commissioner's waiver automatically terminates, and the insurer shall be liable for payment of the assessment on the next succeeding March 1 without retroactive reimbursement for the amount of the antifraud assessments which would normally have accrued during the waiver period.

History. Acts 1997, No. 337, § 4; 1999, No. 881, § 19; 2005, No. 1697, § 26.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination

of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

23-100-103. State Insurance Department Criminal Investigation Division Trust Fund — Creation.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "State Insurance Department Criminal Investigation Division Trust Fund" to be used to defray the expenses of the Criminal

Investigation Division in the discharge of its administrative and regulatory powers and duties as prescribed by law.

(b) No money is to be appropriated from this fund for any purpose except for the personal services and operating expenses, maintenance and operations, and support of and improvements to the division, and at the direction of the Insurance Commissioner, for the use, benefit, and support of the division.

(c) The fund established pursuant to this section shall be administered, disbursed, and invested under the direction of the commissioner and the Treasurer of State.

(d) All income derived through:

(1) Investment of the fund, including, but not limited to, interest and dividends, shall be credited as investment income to the fund; and

(2) Grants, refunds, gifts, or any other sources to the fund shall be credited as income to the fund and deposited therein.

(e) Further, all moneys deposited into the fund shall not be subject to any deduction, tax, levy, or any other type of assessment, except as may be provided by law.

History. Acts 1997, No. 337, § 2; 2005, No. 1697, § 27.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination

of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

23-100-104. Antifraud assessment.

(a)(1)(A) Each licensed insurer shall pay into the State Insurance Department Criminal Investigation Division Trust Fund a nonrefundable antifraud assessment as directed by the Insurance Commissioner for the reasonable and necessary expenses and operation of the Criminal Investigation Division of the State Insurance Department.

(B) As used in this section, "licensed insurer" includes a:

- (i) Licensed stock and mutual insurance company;
- (ii) Reinsurer;
- (iii) Health maintenance organization;
- (iv) Fraternal benefit society;
- (v) Hospital and medical service corporation;
- (vi) Stipulated premium insurer;
- (vii) Farmers' mutual aid association; and
- (viii) Prepaid legal insurer.

(2) This section does not apply to an approved but nonadmitted surplus lines insurer or to a registered risk retention group.

(b)(1) The antifraud assessment required by this section shall be paid annually on or before June 30 at the time and in the manner that the commissioner prescribes or at times alternate from June 30 annually that the commissioner prescribes.

(2)(A) By rule the commissioner may set the amount of the antifraud assessment.

(B) The antifraud assessment shall not exceed one thousand dollars (\$1,000) per fiscal year.

(3) The antifraud assessment shall be in addition to the premium taxes and fees now required under existing law.

(c) This section shall apply notwithstanding the provisions of § 26-57-601 et seq., the State Insurance Department Trust Fund Act, § 23-61-701 et seq., and other provisions of Arkansas law.

History. Acts 1997, No. 337, § 3; 1999, No. 881, § 20; 2005, No. 1697, § 28; 2007, No. 827, § 190.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

Amendments. The 2007 amendment rewrote the section.

23-100-105. Insurers' antifraud fees — Deposit into State Insurance Department Criminal Investigation Division Trust Fund.

The Insurance Commissioner shall deposit all antifraud assessments and any penalties assessed under this chapter, as well as any other income received for purposes set out in § 23-100-103(a), into the State Insurance Department Criminal Investigation Division Trust Fund as special revenues.

History. Acts 1997, No. 337, § 5; 1999, No. 881, § 21; 2005, No. 1697, § 29.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

Amendments. The 2007 amendment rewrote the section.

23-100-107. State Insurance Department Criminal Investigation Division Trust Fund — Department vouchers and Auditor of State warrants.

(a) All antifraud assessments, penalties, and revenues provided in this chapter received as special revenues for the State Insurance Department Criminal Investigation Division Trust Fund and deposited therein shall be deemed for all purposes special revenues of the fund and of the State Insurance Department for the sole support, operation, and maintenance of the Criminal Investigation Division and when paid into the State Treasury by the Insurance Commissioner, shall be maintained by the State Treasury as the State Insurance Department Criminal Investigation Division Trust Fund, separate from all other funds, and available only for the payment of the expenses of the division pursuant to the appropriations therefor.

(b) Upon proper voucher from the commissioner, the Auditor of State shall issue his or her warrant on the Treasurer of State in payment of all salaries and other expenses incurred in the administration of this chapter.

History. Acts 1997, No. 337, § 7; 1999, No. 881, § 22; 2005, No. 1697, § 30.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

CHAPTER 102

ARKANSAS EARTHQUAKE AUTHORITY ACT

SECTION.

23-102-103. Definitions.

23-102-103. Definitions.

As used in this chapter:

- (1) "Authority" means the Arkansas Earthquake Authority;
- (2) "Board" means the Board of the Arkansas Earthquake Authority;
- (3) "Commissioner" means the Insurance Commissioner;
- (4) "Event" means an earthquake and all subsequent earthquakes occurring within the following seventy-two-hour period;
- (5) "Insurer" means all property insurers as defined in § 23-62-104 and includes farmers' mutual aid associations and all casualty insurers as defined in § 23-62-105;

(6) “Net direct written premium” is the gross amount of premiums received from policies of insurance issued in this state less return premiums and dividends paid or credited to policyholders. “Net direct written premium” does not include premiums for indemnity reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for indemnity reinsurance ceded to other insurers; and

(7) “Program” means the Market Assistance Program.

History. Acts 1999, No. 1343, § 3. ing set out to revise the order of (6) and
Publisher’s Notes. This section is be- (7).

CHAPTER 103

TITLE INSURANCE

SUBCHAPTER.

1. GENERAL PROVISIONS. [REPEALED.]
2. ARKANSAS TITLE INSURANCE AGENTS’ LICENSING BOARD. [REPEALED.]
3. LICENSING REQUIREMENTS. [REPEALED.]
4. ARKANSAS TITLE INSURANCE ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-103-101 — 23-103-103. [Repealed.]

23-103-101 — 23-103-103. [Repealed.]

Publisher’s Notes. This subchapter, concerning general provisions, was repealed by Acts 2007, No. 684, § 8. The subchapter was derived from the following sources:

23-103-101. Acts 2001, No. 1742, § 1.
23-103-102. Acts 2001, No. 1742, § 3;
2003, No. 1767, § 1.
23-103-103. Acts 2001, No. 1742, § 4;
2005, No. 1994, § 459.

SUBCHAPTER 2 — ARKANSAS TITLE INSURANCE AGENTS’ LICENSING BOARD

SECTION.

23-103-201 — 23-103-204. [Repealed.]

23-103-201 — 23-103-204. [Repealed.]

Publisher’s Notes. This subchapter, concerning the title insurance licensing board, was repealed by Acts 2007, No. 684, § 8. The subchapter was derived from the following sources:

23-103-201. Acts 2001, No. 1742, § 5.
23-103-202. Acts 2001, No. 1742, § 6.
23-103-203. Acts 2001, No. 1742, § 7.
23-103-204. Acts 2001, No. 1742, § 8;
2003, No. 1767, § 2.

SUBCHAPTER 3 — LICENSING REQUIREMENTS

SECTION.

23-103-301 — 23-103-316. [Repealed.]

23-103-301 — 23-103-316. [Repealed.]

Publisher's Notes. This subchapter, concerning licensing requirements, was repealed by Acts 2007, No. 684, § 8. The subchapter was derived from the following sources:

- 23-103-301. Acts 2001, No. 1742, § 9; 2003, No. 1767, § 3.
- 23-103-302. Acts 2001, No. 1742, § 2.
- 23-103-303. Acts 2001, No. 1742, § 10.
- 23-103-304. Acts 2001, No. 1742, § 11.
- 23-103-305. Acts 2001, No. 1742, § 12; 2003, No. 1767, § 4.

- 23-103-306. Acts 2001, No. 1742, § 13.
- 23-103-307. Acts 2001, No. 1742, § 14; 2003, No. 1767, § 5.
- 23-103-308. Acts 2001, No. 1742, § 15.
- 23-103-309. Acts 2001, No. 1742, § 16.
- 23-103-310. Acts 2001, No. 1742, § 17.
- 23-103-311. Acts 2001, No. 1742, § 18.
- 23-103-312. Acts 2001, No. 1742, § 19.
- 23-103-313. Acts 2001, No. 1742, § 20.
- 23-103-314. Acts 2001, No. 1742, § 21.
- 23-103-315. Acts 2003, No. 1767, § 6.
- 23-103-316. Acts 2003, No. 1767, § 7.

SUBCHAPTER 4 — ARKANSAS TITLE INSURANCE ACT

SECTION.

- 23-103-401. Title.
- 23-103-402. Definitions.
- 23-103-403. Requirement for license.
- 23-103-404. Authorized activities of title insurers.
- 23-103-405. Title insurers — Limitation of authority — Powers.
- 23-103-406. Title insurance agents — Examination of records.
- 23-103-407. Agency contracts.
- 23-103-408. Minimum search requirements.
- 23-103-409. Title insurance agent — Restrictions.

SECTION.

- 23-103-410. Title insurance inventory maintenance.
- 23-103-411. Title insurer — Audit.
- 23-103-412. Title insurer — Restrictions.
- 23-103-413. Policyholder rights and disclosure.
- 23-103-414. Record retention requirements.
- 23-103-415. Rules promulgated by Insurance Commissioner.
- 23-103-416. Penalties — Liabilities.
- 23-103-417. Access to public records.

Effective Dates. Acts 2007, No. 684, §10, provided: "Sections 1 through 9 of this act take effect January 1, 2008."

23-103-401. Title.

This subchapter shall be known and may be cited as the "Arkansas Title Insurance Act".

History. Acts 2007, No. 684, § 6.

23-103-402. Definitions.

As used in this subchapter:

(1) "Closing" means the collection and disbursement of funds and title insurance premiums out of escrow in connection with a transaction involving either personal or real property, including the transfer of title or creation of a lien on the title;

- (2) "Closing agent" means a person that facilitates a closing;
- (3) "Depositor" means the person providing funds or documents for delivery to a depository in connection with a transaction involving real property;
- (4) "Depository" means a title insurer, title insurance agency, closing agent, or qualified financial institution receiving a deposit of funds or documents;
- (5) "Escrow" means the act or process of providing closing services or services pursuant to an escrow agreement;
- (6) "Escrow account" means the demand deposit account maintained by a title insurer or title insurance agency at a qualified financial institution into which the title insurer or title insurance agency deposits and disburses funds collected from any person that is or will be a party to a transaction involving real property;
- (7) "Person" means an individual or any partnership, association, cooperative, corporation, firm, trust, limited liability company, or other legal entity;
- (8) "Qualified financial institution" means a bank, credit union, or savings and loan association regulated, supervised, or examined by federal or state authorities having regulatory authority over banks and trust companies;
- (9) "Risks" means the danger or hazards of a loss by encumbrance, a defective or invalid title, or adverse claim to title covered under a title insurance policy;
- (10) "Title insurance agency" means a person that has an agency contract under § 23-103-407 with a title insurer;
- (11)(A) "Title insurance agent" means an individual affiliated with a title insurance agency who is authorized on behalf of a title insurer to issue a title insurance report or title insurance policy and is:
 - (i) A resident of the State of Arkansas licensed under § 23-64-101 et seq.; or
 - (ii) A nonresident individual licensed under § 23-64-101 et seq. and employed by a resident licensee.
- (B) "Title insurance agent" does not include:
 - (i) An individual employed by a title insurance agency that does not sell or negotiate title insurance but who performs marketing duties under the supervision of a title insurance agent;
 - (ii) An individual employed by a title insurance agency that is a closing agent and does not solicit, sell, or negotiate title insurance; or
 - (iii) A closing agent that provides closing services but does not otherwise engage in title insurance business in the State of Arkansas;
- (12)(A) "Title insurance business" means:
 - (i) Issuing or offering to issue as an insurer a title insurance policy or closing protection letter;
 - (ii) Transacting or proposing to transact any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance report or policy:
 - (a) Guaranteeing, warranting, or otherwise insuring the status of title, liens, encumbrances, or other matters of record;

- (b) Executing title insurance policies;
- (c) Effecting contracts of reinsurance;
- (d) Underwriting titles; or
- (e) Collecting, disbursing, or receiving title insurance premiums, unless incidental to serving as a closing agent; or

(iii) Doing or proposing to do any business substantially equivalent to the matters described in this subdivision (12) in a manner designed to evade this subchapter.

(B) "Title insurance business" does not include:

- (i) A closing or escrow; or
- (ii) The activities of a closing agent or other party performing a closing or escrow;

(13) "Title insurance policy" means a contract, including any coverage, enhancements to coverage, or endorsements, insuring or indemnifying owners of or other persons lawfully interested in personal or real property against loss or damage arising from any of the following conditions existing on, before, or subsequent to the policy date and not specifically excepted or excluded:

- (A) Defects in or liens or encumbrances on the insured title;
- (B) Unmarketability of the insured title;
- (C) Invalidity or unenforceability of liens or encumbrances on the insured title of the personal or real property;
- (D) Title being vested other than as stated in the policy;
- (E) Lack of a legal right of access to the land that is part of the insured title in a policy relating to real property;
- (F) Lack of priority of the lien of any insured mortgage over any statutory lien for services, labor, or materials as specifically described in the policy;
- (G) Invalidity or unenforceability of any assignment of an insured mortgage subject to certain conditions; or
- (H) The priority of any lien or encumbrance over the lien of an insured mortgage;

(14)(A) "Title insurance premium" means the funds paid to the title insurer and to an appointed title insurance agency as consideration for the amount of liability assumed by a title insurer under a title insurance policy, including all amounts retained by the title insurance agency pursuant to the title insurance agency's contract with the title insurer.

(B) "Title insurance premium" does not include charges for the performance of services related or incidental to title insurance or closings that are disclosed to the person charged, including without limitation:

- (i) Title search, abstracting, or title examination fees;
- (ii) Title opinion fees;
- (iii) Document preparation fees;
- (iv) Escrow or closing fees;
- (v) Notary fees;
- (vi) Attorney's fees;

- (vii) Fees incurred to cure defects in title;
- (viii) Tax report or tax certification fees;
- (ix) Title report fees;
- (x) Processing fees;
- (xi) Courier fees; and
- (xii) Fees incident to the issuance of a title insurance report or policy;

(15) "Title insurance report" means a preliminary report, commitment, or binder issued before the issuance of a title insurance policy containing the requirements, terms, conditions, exceptions, and any other matters incorporated by reference under which a title insurer is willing to issue a title insurance policy;

(16) "Title insurer" means a company authorized under the laws of this state to transact title insurance business; and

(17) "Underwrite" means the acceptance or rejection of risk on behalf of the title insurer.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 1; 2011, No. 515, § 1.

A.C.R.C. Notes. The amendment of 23-103-402 by Acts 2009, No. 1190, § 1, omitted the phrase "by a title insurer or a title insurance agent" following "proposing to transact" in (12)(B) without striking through the language to indicate its repeal.

Amendments. The 2009 amendment substituted "agency" for "agent" or variant in (4), (5), (6), and (14)(A); inserted "and disburses" in (6); deleted (7), which defined "indemnity agreement," inserted (10), and redesignated subdivisions accordingly; in (11), substituted "an individual affiliated with a title insurance agency who" for "a person that" in (11)(A), in (11)(B)(i) substituted "title insurance agency that" for "licensee who" and "under the supervision of a title insurance agent" for "directed to depository institutions or licensed real estate brokers and agents on behalf and under the direction of a licensee," and substituted "title insurance agency that" for "resident licensee who" in

(11)(B)(ii); in (12), inserted "letter" in (12)(A), and deleted (12)(b)(vi); substituted "an appointed" for "its" in (14)(A); and made minor stylistic changes.

The 2011 amendment, in (1), deleted "the process of executing documents in a transaction involving either personal or real property, including the transfer of title or creation of a lien on the title, or" following "means" and substituted "and title insurance premiums out of escrow in connection with a transaction involving either personal or real property, including the transfer of title or creation of a lien on the title" for "in connection with the transaction"; deleted "for a fee" following "a closing" in (2); inserted "closing agent" in (4); deleted "by a title insurer or title insurance agency" following "agreement" in (5); added (11)(B)(iii); redesignated former (12) as (12)(A) and former (12)(A) through (C) as (12)(A)(i) through (iii); inserted present (12)(B); substituted "title examination fees" for "examination of title" in (14)(B)(i); and, in (14)(B)(ii), deleted "Obtaining a" at the beginning and inserted "fees" at the end.

23-103-403. Requirement for license.

(a)(1) Except as provided in subdivision (a)(1) of this section and § 23-103-404, only an appointed title insurance agency licensed under § 23-64-101 et seq. shall issue title insurance policies, reports, or otherwise transact title insurance business.

(2) An appointed title insurance agency licensed under § 23-64-101 et seq. shall not issue closing protection or issue as an insurer a title insurance policy.

(b) All title insurance policies and reports covering an insurable interest in title to real property located in this state shall be signed by a title insurance agent:

- (1) Properly appointed by a title insurer;
- (2) Affiliated with a title insurance agency; and
- (3) Licensed in this state under this subchapter.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 2; 2011, No. 515, § 2.

Amendments. The 2009 amendment substituted “Only an appointed title insurance agency licensed under § 23-64-101 et seq” for “Other than a title insurer, only a person authorized as a title insurance agent” in (a); in (b), redesignated the last phrase as (b)(3), inserted (b)(1) and (b)(2), substituted “a title insurance

agent” for “an agent” in the present introductory language, and made related changes.

The 2011 amendment, in (a)(1), added “Except as provided in subdivision (a)(1) of this section and § 23-103-404” at the beginning, deleted “the business of” following “transact,” and inserted “business”; and added (a)(2).

23-103-404. Authorized activities of title insurers.

(a) Subject to the exceptions and restrictions contained in this subchapter, a title insurer may:

- (1) Transact only title insurance business;
- (2) Reinsure title insurance policies; and
- (3) Unless prohibited by the Insurance Commissioner, perform or cause to be performed ancillary activities whether or not in contemplation of or in conjunction with the issuance of a title insurance report or policy including:

(A) Underwriting title to and furnishing related information about personal property or real property; and

(B) Procuring and furnishing information about relevant personal property.

(b) Only a title insurer may issue closing protection or issue as an insurer a title insurance policy.

History. Acts 2007, No. 684, § 6; 2011, No. 515, § 3.

Amendments. The 2011 amendment added (b).

23-103-405. Title insurers — Limitation of authority — Powers.

(a)(1) An insurer that transacts any class, type, or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact title insurance business in this state.

(2) Title insurance shall not be transacted, underwritten, or issued by any insurer transacting or licensed to transact any other class, type, or kind of business.

(b) A title insurer shall not engage in the business of guaranteeing payment of the principal or the interest on bonds or mortgages.

(c) Notwithstanding subsection (a) of this section:

(1) If the closing services are provided in Arkansas, the closing agent shall give notice of availability of closing protection to all parties to a

transaction in which it is contemplated that title insurance may be issued;

(2) Upon written request by a party to a closing with a licensed title insurance agency with which the title insurer has an agency contract or closing agent with which the title insurer is in privity of contract, the title insurer shall issue a closing protection letter to the requesting party;

(3)(A) Except as provided in subdivision (c)(3)(C) of this section, upon written request by a party to a closing conducted by a person that is not a licensed title insurance agency, the title insurer at its discretion may issue closing protection to the requesting party if the title insurer and the closing agent are in privity of contract.

(B) The contract shall:

(i) Affirmatively state that the title insurer will indemnify third parties for the actions of the closing agent to the extent provided in the closing protection letter; and

(ii) Require the closing agent to make its books and records available to the title insurer for each transaction in which a closing protection letter is issued by the title insurer on behalf of the closing agent except to the extent the books and records are privileged under the attorney-client privilege or otherwise.

(C) The contract requirements contained in subdivisions (c)(3)(A) and (B) of this section do not apply if the closing is conducted outside the State of Arkansas and the closing agent is licensed or otherwise authorized to conduct a closing in the state where the closing is conducted;

(4) The closing protection shall conform to the terms of coverage and form of instrument as may be filed with the Insurance Commissioner and shall indemnify a person solely against loss of closing funds because of the following acts of a closing agent, title insurer's named employee, or title insurance agency:

(A) Theft or misappropriation of closing funds; or

(B) Failure to comply with written instructions from the proposed insured when agreed to by the closing agent, employee, or title insurance agency as it relates to the status of the title to the interest in land or to the validity, enforceability, and priority of the lien of a mortgage or deed of trust on the interest in land;

(5) The form and amount charged by a title insurer for closing protection coverage shall be filed with the commissioner at least twenty (20) days before the first use of closing protection coverage in the market;

(6) Except as provided in this section, a title insurer shall not provide any other coverage that purports to indemnify against improper acts or omissions of a person with regard to escrow or closing services;

(7) A title insurer shall not issue a closing protection letter unless the title insurer contemplates issuing a title insurance policy to a party to the transaction; and

(8) Issuing closing protection is not a violation of § 23-103-404.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 3; 2011, No. 515, § 4.

Amendments. The 2009 amendment substituted “agency” for “agent” in four places; substituted “closing protection” for “settlement protection” in the introduc-

tory language of (3); and made minor stylistic changes.

The 2011 amendment rewrote (c)(1) and (2); inserted present (c)(3) and redesignated the remaining subdivisions accordingly; and added (c)(7) and (8).

CASE NOTES

Negligence.

Bank stated a claim of negligence because of the title company’s duty allegedly created by this section to underwrite an Insured Closing Protection Letter which provided coverage for theft and misappropriation and the alleged breach of that duty which caused the bank damage.

However, the bank’s general claim of negligence was dismissed as it was simply a recitation of the legal elements of negligence. *U.S. Bank N.A. ND v. Elender Escrow, Inc.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 134690 (E.D. Ark. Nov. 21, 2011).

23-103-406. Title insurance agents — Examination of records.

The Insurance Commissioner or title insurer during normal business hours may examine, audit, and inspect any and all books, records, files, and escrow and operating accounts related to title insurance reports and policies maintained by a title insurance agency, its successor in interest, transferee, or receiver under this subchapter.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 4.

substituted “agency” for “agent,” and made minor stylistic changes.

Amendments. The 2009 amendment

23-103-407. Agency contracts.

(a)(1) A person acting in the capacity of a title insurance agency shall not place business with a title insurer, and a title insurer shall not accept business from a title insurance agency unless a written contract exists between the title insurer and title insurance agency.

(2) The written contract shall establish the responsibilities of the title insurer and title insurance agency and specify the division of the responsibilities if both share responsibility for a particular function.

(3) The written contract shall also contain:

(A) The types of risks that may be undertaken;

(B) The maximum authority or limits of liability;

(C) The territorial limitations;

(D) All terms of compensation for the title insurance agency;

(E) Policies and funds remittance;

(F) Termination provisions;

(G)(i) The date by which all funds and policies due under the contract shall be accounted for to the title insurer.

(ii) The date shall be no later than sixty (60) days after:

(a) Issuance of the policy;

(b) The satisfaction of all requirements and conditions of any report; or

(c) The time specified in the contract if less than sixty (60) days; and

(H) The time in which the title insurance agency has to report and forward to the title insurer all claims filed in writing with the title insurance agency by policyholders or other claimants.

(b) The contract shall not be assigned in whole or in part by the title insurance agency unless as part of a sale of a title insurance agency or its assets and approved in writing by the title insurer.

(c)(1) The title insurer may terminate the contract upon written notice to the title insurance agency under any of the following circumstances:

(A) Fraud, insolvency, appointment of a receiver or conservator, bankruptcy, cancellation of the title insurance agency's license or permit to do business, or the commencement of legal proceedings by the state of the domicile of the title insurance agency, which if successful would lead to the cancellation of the title insurance agency's permit or license to do business;

(B) Material breach of any provision of the contract between the title insurer and the title insurance agency; or

(C) In accordance with any other termination provision of the contract.

(2) Upon the effective date as set forth in the notice of termination from a title insurer unless otherwise agreed to in writing by the title insurer, the title insurance agency shall immediately discontinue all title insurance business on behalf of that title insurer.

(3) This subsection does not relieve the title insurance agency or the title insurer of any other contractual obligation.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 5. in the section heading; substituted "agency" for "agent" or variant throughout the section, and made minor stylistic changes.

Amendments. The 2009 amendment substituted "Agency" for "Underwriting"

23-103-408. Minimum search requirements.

(a) A title insurance report or policy shall not be issued unless the title insurance agency or title insurance agent has caused to be made a search of the title from the evidence prepared from a title plant or files of the county where the property is located or from the records of the clerk or the ex officio recorder of land records of the county that maintains records relating to real estate and any interest in the county.

(b) The search shall include a review of all matters affecting the title to the property or interest to be insured for a continuous period of not less than the immediately preceding thirty (30) years.

(c) A title insurance policy shall not be issued until the title insurer or title insurance agent has caused to be made a determination of insurability of title in accordance with the title insurer's underwriting practices.

History. Acts 2007, No. 684, § 6; 2009, substituted “preceding” for “preceeding” in (b), and made minor stylistic changes.

Amendments. The 2009 amendment

23-103-409. Title insurance agent — Restrictions.

A title insurance agent shall not:

- (1) Bind reinsurance on behalf of the title insurer;
- (2) Permit any of its directors, officers, controlling shareholders, or employees to serve on the title insurer’s board of directors if the title insurance agent wrote five percent (5%) or more of the direct premiums of the title insurer written in the previous calendar year as shown on the title insurer’s most recent annual statement filed with the Insurance Commissioner, unless the title insurer and the title insurance agent are under common control or ownership;
- (3) Jointly employ an individual who is employed with the title insurer unless the title insurer and the title insurance agent are under common control or ownership; or
- (4) Issue a title insurance report or policy insuring the interest of an insured in real property in this state unless the title insurance agent is licensed under this subchapter and the title insurance report or policy is signed by a title insurance agent licensed under this subchapter.

History. Acts 2007, No. 684, § 6.

23-103-410. Title insurance inventory maintenance.

(a) The title insurer and the title insurance agency shall each maintain an inventory of all numbered policy forms or policy numbers assigned to the title insurance agency by the title insurer.

(b) If title insurance policies are generated electronically by the title insurer, the title insurer shall maintain the inventory of policy numbers assigned to the title insurance agency.

History. Acts 2007, No. 684, § 6; 2009, added (b), redesignated the existing text accordingly, and substituted “agency” for

Amendments. The 2009 amendment “agent” in (a).

23-103-411. Title insurer — Audit.

(a)(1) At least one (1) time each year, a title insurer shall conduct an on-site audit of the escrow and closing practices related to the issuance of title insurance policies, escrow accounts, security arrangements, files, underwriting and claims practices, and policy inventory of the title insurance agencies that the title insurer has authorized to issue title insurance reports or policies on its behalf.

(2) If the title insurance agency fails to maintain separate escrow or trust accounts for each title insurer it represents, the title insurer shall verify that the funds related to closings in which the title insurer’s policies are issued are reasonably ascertainable from the books of account and records of the title insurance agency.

(b)(1) The Insurance Commissioner may promulgate rules setting forth the standards of audit and the form of audit required.

(2) The commissioner may also require the title insurer to provide a copy of its audit reports to the commissioner.

(3) Any audits shall remain confidential unless introduced as evidence at a hearing or court proceeding involving the title insurance agency or agent.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 8; 2011, No. 515, § 5.

Amendments. The 2009 amendment inserted “related to the issuance of title insurance policies and closing protection letters” in (a)(1), and substituted “agency”

for “agent” in two places in (a)(2); and inserted “agency or” in (b)(3).

The 2011 amendment deleted “and closing protection letters” following “policies” in (a)(1).

23-103-412. Title insurer — Restrictions.

A title insurer shall not:

(1) Appoint any director, officer, controlling shareholder, or employee of a title insurance agency to serve on the title insurer’s board of directors if the title insurance agency wrote five percent (5%) or more of the direct premiums of the title insurer written during the previous calendar year as shown on the title insurer’s most recent annual statement on file with the Insurance Commissioner, unless the title insurer and the title insurance agency are under common control or ownership; or

(2) Jointly employ an individual who is employed with the title insurance agency unless the title insurer and the title insurance agency are under common control or ownership.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 9.

substituted “agency” for “agent” in five places.

Amendments. The 2009 amendment

23-103-413. Policyholder rights and disclosure.

(a)(1) When a title insurance report includes an offer to issue an owner’s title insurance policy covering the resale of owner-occupied residential property, the title insurance report shall be furnished to the purchaser or mortgagor or to the representative of the purchaser-mortgagor as soon as reasonably possible before closing.

(2) The title insurance report furnished to the purchaser-mortgagor shall incorporate the following statement on the first page in bold type: “Please read the exceptions and the terms shown or referred to herein carefully. The exceptions are meant to provide you with notice of matters that are not covered under the terms of the title insurance policy and should be carefully considered.

This report is a written representation as to the condition of title for purposes of providing title insurance and lists all liens, defects, and encumbrances filed of record within the last thirty (30) years that have not been released of record or that are not statutorily expired.

No title insurance agent or any other person other than a licensed Arkansas attorney may provide legal advice concerning the status of title to the property described in the title commitment.”

(b)(1) When an owner’s title insurance policy has not been requested, a title insurer or a title insurance agency issuing a title insurance policy to a lender in conjunction with a mortgage loan involving real property made simultaneously with the purchase of all or part of the real property securing the loan shall give written notice on a form prescribed or approved by the Insurance Commissioner to the purchaser-mortgagor at the closing.

(2) The notice required by subdivision (b)(1) of this section shall explain:

(A) That a title insurance policy for the lender involving real property is issued for the protection of the mortgage lender and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the real property being purchased;

(B) The coverage that a title insurance policy relating to real property insures and that risks exist for the purchaser-mortgagor of real property that could be insured through the purchase of an owner’s title policy involving real property; and

(C) That the purchaser-mortgagor may obtain an owner’s title insurance policy at a specified premium.

(3) A copy of the notice signed by the purchaser-mortgagor shall be retained in the closing file for at least five (5) years after the effective date of the lender’s title insurance policy.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 10.

Amendments. The 2009 amendment, in the second paragraph of the statement under (a)(2), deleted “affecting title to the land that are” following “encumbrances,”

and inserted “within the last thirty (30) years that have not been released of record or that are not statutorily expired”; and in (b), substituted “agency” for “agent” in (b)(1) and made minor stylistic and punctuation changes.

23-103-414. Record retention requirements.

(a) The title insurer and the title insurance agency shall maintain sufficient records of their affairs, including evidence of underwriting title, determination of insurability, and records of their escrow operations and escrow accounts.

(b) The Insurance Commissioner may prescribe the specific records and documents to be kept and the length of time for which the records shall be maintained.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 11.

Amendments. The 2009 amendment substituted “agency” for “agent” in (a).

23-103-415. Rules promulgated by Insurance Commissioner.

The Insurance Commissioner shall issue rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to implement this subchapter.

History. Acts 2007, No. 684, § 6.

23-103-416. Penalties — Liabilities.

(a) If the Insurance Commissioner determines that a title insurer, title insurance agency, title insurance agent, or any other person has violated this subchapter or any rule or order promulgated under this subchapter, the commissioner may order:

(1)(A) Payment of a monetary penalty not to exceed one thousand dollars (\$1,000) for each act or violation and not to exceed an aggregate penalty of ten thousand dollars (\$10,000) unless the title insurer, title insurance agency, title insurance agent, or other person knew or reasonably should have known that the title insurer, title insurance agency, title insurance agent, or other person was in violation of this subchapter.

(B) If the title insurer, title insurance agency, title insurance agent, or other person knew or reasonably should have known that the title insurer, title insurance agency, title insurance agent, or other person was in violation of this subchapter, the penalty shall not exceed five thousand dollars (\$5,000) for each act or violation and not exceed an aggregate penalty of fifty thousand dollars (\$50,000) in any six-month period; or

(2) Suspension or revocation of the title insurer's, title insurance agency's, title insurance agent's, or other person's license if the title insurer, title insurance agency, title insurance agent, or other person knew or reasonably should have known that the title insurer, title insurance agency, title insurance agent, or other person was in violation of this subchapter.

(b) If an order of rehabilitation or liquidation of the title insurer or of conservation of assets of the title insurer has been entered and the receiver appointed under the order determines that the title insurance agency or title insurance agent or any other person has not complied with this subchapter or any rule or order promulgated under this subchapter and the title insurer suffered any resulting loss or damage, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the title insurer and its policyholders and creditors.

(c) This section does not affect the right of the commissioner to impose any other penalties provided under § 23-64-101 et seq.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 12.

Amendments. The 2009 amendment inserted "title insurance agency" through-

out the section; substituted "may maintain" for "shall maintain" in (b); and made related and minor stylistic changes.

23-103-417. Access to public records.

(a) A title insurance agent, a title insurance agency, and a person affiliated with a title insurance agency shall:

(1) Have free access to the instruments of record affecting real property filed in any city, county, or state office; and

(2) Be permitted to:

(A) Occupy reasonable space, use equipment, and make memoranda, notations, and copies of instruments of record during the business hours of the city, county, or state office; and

(B) Compile, post, copy, and maintain books, records, and indices.

(b)(1) A title insurance agent, a title insurance agency, and a person affiliated with a title insurance agency has the right of access to any instrument filed of record in a city, county, or state office no later than the close of business of the first business day following the day the instrument was filed.

(2) A fee shall not be charged for providing access to the instrument.

(c) As used in this section, "access" means possession of an instrument sufficient to mechanically reproduce the instrument in the office where the instrument is filed.

(d)(1) A person entitled to access under this section that is denied access may petition immediately to a circuit court of competent jurisdiction.

(2) Upon written complaint of a person or an interested party denied a right provided by this section, the circuit court having jurisdiction shall hear the complaint within seven (7) days of the date the complaint is filed.

(3)(A) In an action or appeal of an action to enforce the rights granted by this section, the court shall assess against a losing party reasonable attorney's fees and other litigation expenses reasonably incurred by a party that has substantially prevailed unless the court finds that the position of the losing party was substantially justified or that other circumstances make an award of attorney's fees and other litigation expenses unjust.

(B) Expenses shall not be assessed against the State of Arkansas or any of its agencies or departments.

(C) If at trial a defendant has substantially prevailed in the action, the court may assess attorney's fees and litigation expenses against a plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.

History. Acts 2009, No. 1190, § 13.

SUBTITLE 4. MISCELLANEOUS REGULATED INDUSTRIES

CHAPTER 110

ARKANSAS HORSE RACING LAW

SUBCHAPTER.

2. ARKANSAS RACING COMMISSION.

3. FRANCHISES GENERALLY.

SUBCHAPTER

4. CONDUCT OF MEETS.

SUBCHAPTER 1 — GENERAL PROVISIONS

23-110-105. Racing passes.

A.C.R.C. Notes. Acts 2013, No. 120, § 6, provided: “RACING PASS RESTRICTIONS. The Director of the Department of Finance and Administration shall set a maximum number of racing passes to be printed and issued annually and it shall

not be less than the number printed in 1990.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

SUBCHAPTER 2 — ARKANSAS RACING COMMISSION

SECTION.

23-110-202. Officers.

23-110-204. Powers and duties.

SECTION.

23-110-205. Hearings.

Effective Dates. Acts 2007, No. 856, § 6: Apr. 3, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission is responsible for licensing individuals and businesses that wish to be involved in conducting electronic games of skill and thoroughbred horse and greyhound racing in the State of Arkansas; that there is an immediate need for the Arkansas Racing Commission to obtain state and federal background investigations for potential licensees; and that this act provides the necessary authorization for the Arkansas Racing Commission to obtain the background investigations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 350, § 8: Mar. 14, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas

Racing Commission’s authority to impose certain fees and penalties will expire unless specific statutory authority to assess such fees and penalties is enacted and becomes law; and the Arkansas Racing Commission’s power to assess such fees and penalties is imperative to the Arkansas Racing Commission’s ability to effectively supervise and regulate, in the public interest, horse racing and greyhound racing in Arkansas. It is further found and determined by the General Assembly of the State of Arkansas that there would be a loss of revenue to the state if wagers on horse racing and greyhound racing are not permitted to be placed by additional forms of communication by patrons of Arkansas horse racing and greyhound racing tracks, whether or not the patron is located on the grounds of the race track facility when placing the wager. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-110-202. Officers.

(a) The Governor shall from time to time select from the membership of the Arkansas Racing Commission a chair and a vice chair.

(b)(1) The Director of the Department of Finance and Administration shall be ex officio secretary of the commission unless the Governor shall designate another person from the Revenue Division of the Department of Finance and Administration to serve in that capacity, but the Secretary of the Arkansas Racing Commission shall not be a member of the commission nor shall he or she have a vote on matters coming before it.

(2) The secretary shall be the commission's executive officer and shall administer the provisions of this chapter and the rules, regulations, and orders established under this chapter.

(3) By resolution duly adopted, the commission may delegate to the secretary any of the powers or duties vested in or imposed upon the commission by this chapter, and the delegated powers and duties may be exercised by the secretary in the name of the commission.

(4) The secretary shall be custodian of all property held in the name of the commission and shall be the ex officio disbursing agent of all funds available for its use.

(5) The secretary shall furnish bond to the state, with a corporate surety thereon, in the penal sum of twenty-five thousand dollars (\$25,000), conditioned that he or she will faithfully perform his or her duties of office and properly account for all funds received and disbursed by him or her as secretary.

(6) Within such limitations as may be provided by appropriations therefor, the secretary may employ such assistants and other personnel as are, in his or her opinion, necessary to properly administer the provisions of this chapter.

History. Acts 1957, No. 46, §§ 5, 6; A.S.A. 1947, §§ 84-2731, 84-2732.

Publisher's Notes. This section is being set out to reflect a correction in (b)(2).

23-110-204. Powers and duties.

(a) Subject to the limitations and conditions as provided in this chapter or other applicable law, the Arkansas Racing Commission shall have sole jurisdiction over the business and the sport of horse racing in this state where the racing is permitted for any stake, purse, or reward, and, in exercising its jurisdiction, but without necessarily being limited to the following enumeration, it shall be the function, power, and duty of the commission to:

- (1) Grant franchises to conduct horse races;
- (2) Approve dates for each racing meet and issue permits therefor;
- (3) Issue licenses to:
 - (A) An apprentice jockey;
 - (B) An assistant trainer;
 - (C) An attendant;
 - (D) A franchise holder's employee;

- (E) A horse owner;
 - (F) A horse trainer;
 - (G) A horseshoer;
 - (H) A jockey agent;
 - (I) A person riding horses on the grounds of the licensed racetrack, including an exercise rider, a jockey, and an outrider;
 - (J) A stable employee or contractor, including a groom and a hotwalker;
 - (K) A valet;
 - (L) A veterinarian;
 - (M) A veterinarian assistant; and
 - (N) An authorized agent, a vendor, contractor, or other person employed or involved with the care of horses or the business of horse racing on the grounds of the licensed racetrack;
- (4) Establish by rule the license fees, not to exceed one hundred fifty dollars (\$150) per applicant, for a license under subdivision (a)(3) of this section;
- (5) Collect and deposit into the State Treasury all fees for franchises and licenses for all taxes, other imposts, and all other moneys due the State of Arkansas in relation to horse racing;
- (6) Hear and determine all matters properly coming before the commission and grant rehearings thereon; and
- (7) Take such other action, not inconsistent with law, as it may deem necessary or desirable to supervise and regulate, and to effectively control in the public interest, horse racing in the State of Arkansas.
- (b)(1) The commission shall have full, complete, and sole power and authority to:
- (A) Impose fines in an amount not to exceed one hundred thousand dollars (\$100,000) per violation of a rule of the commission;
 - (B) Issue orders;
 - (C) Order the forfeiture of purse money won by a disqualified horse;
 - (D) Prescribe conditions under which horse racing shall be conducted by a franchise holder;
 - (E) Promulgate rules;
 - (F) Redistribute forfeited purse money; and
 - (G) Suspend or revoke licenses.
- (2) The authority granted to the commission under this subsection shall be exercised in a reasonable manner.
- (3) The holder of a franchise or a taxpayer may appeal an action of the commission to the Pulaski County Circuit Court.
- (c)(1) The commission shall have no right or power to determine who shall be officers or employees of any franchise holder.
- (2)(A) However, the commission may by rule require that all officers, employees, or agents of the franchise holder who are in charge of, or whose duties relate directly to, the running of races and the handling of any funds which may be wagered on any race are to be approved by the commission.

(B) The commission may compel the discharge of any official, employee, or agent of the franchise holder who fails or refuses to comply with the rules, regulations, or orders of the commission, or who, in the opinion of the commission, is guilty of fraud or dishonesty.

(d) For the purpose of regulating its own procedure and carrying out its functions, powers, and duties, the commission shall have the authority from time to time to make, amend, and enforce all necessary or desirable rules not inconsistent with law.

(e)(1)(A) An applicant shall be fingerprinted to determine an applicant's suitability to be issued a license as a horse owner, horse trainer, jockey, or jockey agent.

(B) The fingerprints shall be forwarded by the Arkansas Racing Commission to the Department of Arkansas State Police for statewide criminal and noncriminal background checks.

(C) After completion of the statewide criminal and noncriminal background check, the fingerprints shall be forwarded by the Department of Arkansas State Police to the Federal Bureau of Investigation for a national criminal history record check.

(2) The applicant shall sign a release that authorizes the:

(A) Department of Arkansas State Police to forward the applicant's fingerprint card to the Federal Bureau of Investigation for a national criminal history record check; and

(B) Release of the results of the statewide criminal and noncriminal background check and the national criminal history record check to the Arkansas Racing Commission.

(3)(A) Any information received by the commission from the statewide criminal and noncriminal background check and the national criminal history record check of the applicant shall be kept confidential and may be used by the commission only for the purpose of determining the applicant's suitability to be licensed by the commission.

(B) The commission may disclose any information under subdivision (e)(3)(A) of this section to the applicant or the applicant's duly authorized representative.

(4) No statewide criminal and noncriminal background check or national criminal history record check shall be required of an applicant for certain classes of licenses that have been exempted from investigation by rules promulgated by the commission.

(5) The commission shall promulgate rules to implement this subsection.

History. Acts 1957, No. 46, §§ 5, 8, 16; A.S.A. 1947, §§ 84-2731, 84-2734, 84-2742; Acts 1987, No. 440, § 1; 2007, No. 856, § 1; 2013, No. 350, §§ 1, 2.

Amendments. The 2013 amendment deleted "horse owners, horse trainers, jockeys, and jockey agent" from the intro-

ductory language of (a)(3); added (a)(3)(A) through (N); substituted "a license under subdivision (a)(3) of this section" for "horse owners, horse trainers, jockeys, and jockey agents" in (a)(4); and rewrote (b).

23-110-205. Hearings.

(a)(1) In the event any franchise holder or person is aggrieved by any action of the Arkansas Racing Commission, he or she shall be entitled to a hearing by the commission.

(2)(A) The hearing shall be held at such place in the State of Arkansas and at such time as the commission may designate.

(B) Notice shall be served on the parties affected by mailing to those parties by registered United States mail the notice of the time and place that the hearing will be held.

(3) In conducting the hearing, the commission shall not be bound by technical rules of evidence.

(4)(A) Any of the parties affected by the hearing may be represented by counsel and shall have the right to introduce evidence.

(B) In its discretion, the commission may likewise be represented by counsel at the hearing, and the counsel shall participate in the conduct of the hearing for and on behalf of the commission.

(b)(1)(A) For purposes of conducting the hearing, the commission shall have the power to administer oaths, issue subpoenas, and compel the attendance and testimony of witnesses.

(B) Any person who has been served with a subpoena to appear and testify issued by the commission in the course of an inquiry or hearing conducted under the provisions of this chapter and who refuses or neglects to appear or testify relative to the hearing as commanded in the subpoena shall be guilty of a violation and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

(2) In connection with any hearing, the commission or the aggrieved may cause the deposition of witnesses within or without the state to be taken in the manner prescribed by existing statutes for the taking of depositions in this state.

(c) All hearings shall be held before at least three (3) members of the commission, and the concurrence of at least three (3) members of the commission shall be necessary for any finding or order.

(d)(1) At the conclusion of the hearing, the commission shall make its findings to be the basis for the action taken by the commission.

(2) The findings and order shall be subject to review in the Pulaski County Circuit Court, from which an appeal may be taken to the Supreme Court.

History. Acts 1957, No. 46, § 19; 1965, No. 176, § 3; A.S.A. 1947, § 84-2745; Acts 2005, No. 1994, § 154.

SUBCHAPTER 3 — FRANCHISES GENERALLY**SECTION.**

23-110-306. Subsequent referendum elections.

SECTION.

23-110-308. Employees.

Effective Dates. Acts 2009, No. 1480, § 117; Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-110-306. Subsequent referendum elections.

(a) After the elapse of not less than two (2) years next following the date of any election conducted pursuant to § 23-110-304, upon petitions filed with it containing the signatures of qualified electors of the county of not less than fifteen percent (15%) of the total number voting in the election for county clerk of the county at the next preceding general election, together with a sum of money estimated by the county board of election commissioners as sufficient to pay all expenses of the election, the board shall call a special election in accordance with § 7-11-201 et seq. on the proposition of continuing horse racing in the county.

(b)(1) The proposition printed on the ballot shall be "FOR Horse Racing" and "AGAINST Horse Racing".

(2) By published notice, the board shall proclaim the results of the election and shall also certify the results to the commission.

(3) All contests in relation to the results of the election shall be commenced within twenty (20) days next following the date of publication of notice as given pursuant to this subsection.

(c) If a majority of the qualified electors of the county voting on the question shall disapprove the continuance of horse racing, the franchise held by the corporation shall, ipso facto, be null and void as of the final date on which a contest of the results of the election may be commenced or, in the event of contest, upon the date of final determination of the issue.

History. Acts 1957, No. 46, § 14; A.S.A. 1947, § 84-2740; Acts 2005, No. 2145, § 60; 2007, No. 1049, § 82; 2009, No. 1480, § 100.

Amendments. The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a).

23-110-308. Employees.

(a)(1) Each franchise holder under this chapter shall require each of its employees to complete a written application for employment. Among other things, the application shall state:

(A) Whether the applicant is a registered voter in Arkansas; and

(B) If the applicant is a registered voter in Arkansas, the date on which the applicant became a registered voter in Arkansas.

(2) Each application shall be signed by the applicant. If the information contained in the application is false, then the applicant shall be guilty of a misdemeanor and upon conviction shall be fined in an amount of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(b)(1) At least eighty percent (80%) of the employees of each franchise holder under this chapter shall be registered voters in Arkansas, excluding employees in the franchise holder's pari-mutuel department and the following professional racing officials:

- (A) Stewards;
- (B) Judges;
- (C) Racing secretary;
- (D) Starter;
- (E) Clerk of scales;
- (F) Paddock judge;
- (G) Patrol judges; and
- (H) Identifier.

(2) At least sixty percent (60%) of the employees in the franchise holder's pari-mutuel department shall be registered voters in Arkansas.

(c)(1) The Arkansas Racing Commission is authorized to examine the applications of all employees of any franchise holder, and if the franchise holder is found by the commission to have fewer than the required number of employees who are registered voters in Arkansas, then the franchise holder shall be allowed forty-eight (48) hours, when so ordered by the commission, to make the necessary adjustments in its employees so as to be in compliance with this section.

(2) In the event the franchise holder fails or refuses to comply with a commission order, then it shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History. Acts 1969, No. 280, §§ 1-3; A.S.A. 1947, §§ 84-2761 — 84-2763; Acts 2005, No. 1994, § 155.

A.C.R.C. Notes. Acts 2005, No. 1994, § 155 purported to amend this section. However, the language set out by Act 1994 as this section was an apparently erroneous combination of two separate Code sections. As a result, the Arkansas Code Revision Commission concluded that no changes were made to this section by Acts 2005, No. 1994, § 155. Acts 2005, No. 1994, § 155 read as follows:

“23-110-308. Employees.

“(a)(1) Each franchise holder under this chapter shall require each of its employees to complete a written application for

employment. Among other things, the application shall state:

“(A) Whether the applicant is a registered voter in Arkansas; and

“(i) Holder of a temporary franchise acquires a site and commences construction within the ninety-day period but fails to complete construction and be open for business within one (1) year next following the end of the ninety-day period;

“(ii) Construction by the holder of a temporary franchise is not in substantial compliance with the plans and specifications theretofore filed with, and approved by, the commission; or

“(iii) Aggregate total of costs of acquisition of a site, construction of buildings and

facilities, and purchase of equipment by the holder of a temporary franchise is less than three million dollars (\$3,000,000).

“(2) However, nothing contained in this section shall be so construed as to prohibit mutual agreement on the part of the commission and the corporation to making such changes in the plans and specifications for construction as may be deemed necessary or desirable, but no changes may be agreed to which will have the effect of reducing the total aggregate cost of plant and equipment below three million dollars (\$3,000,000).

“(b)(1) Upon completion of any plant, within the time, in the manner, and at the minimum cost as provided in subsection (a) of this section and upon the payment of

a franchise fee in the amount of twenty-five thousand dollars (\$25,000) to the commission by the holder of the temporary franchise, the commission shall issue its franchise in exchange for the temporary franchise held by the corporation. The corporation may then proceed to conduct horse racing meets in accordance with the provisions of this chapter or other applicable law.

“(2) The franchise shall thereafter be effective in the hands of the corporation unless and until terminated by operation of law, or sooner if terminated by the commission based upon the corporation’s failure to comply with applicable horse racing laws or by the voluntary forfeiture of the franchise by the franchise holder.”

SUBCHAPTER 4 — CONDUCT OF MEETS

SECTION.

23-110-401. Accordance with license required.

23-110-404. [Repealed.]

23-110-405. Wagering — Penalty for improper wagering.

SECTION.

23-110-411. Admission tax.

23-110-415. Failure to pay tax.

Effective Dates. Acts 2007, No. 856, § 6: Apr. 3, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission is responsible for licensing individuals and businesses that wish to be involved in conducting electronic games of skill and thoroughbred horse and greyhound racing in the State of Arkansas; that there is an immediate need for the Arkansas Racing Commission to obtain state and federal background investigations for potential licensees; and that this act provides the necessary authorization for the Arkansas Racing Commission to obtain the background investigations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by

the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 350, § 8: Mar. 14, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission’s authority to impose certain fees and penalties will expire unless specific statutory authority to assess such fees and penalties is enacted and becomes law; and the Arkansas Racing Commission’s power to assess such fees and penalties is imperative to the Arkansas Racing Commission’s ability to effectively supervise and regulate, in the public interest, horse racing and greyhound racing in Arkansas. It is further found and determined by the General Assembly of the State of Arkansas that there would be a loss of revenue to the state if wagers on horse racing and greyhound racing are not permitted to be placed by additional forms of communication by patrons of Arkansas horse racing and greyhound racing tracks, whether or not the patron is located on the grounds of the race track facility when

placing the wager. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If

the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-110-401. Accordance with license required.

(a) Any franchise holder or any person aiding or abetting in the holding or conducting of any horse racing meet at which horse racing shall be permitted for any stake, purse, or reward, except in accordance with a license duly issued as provided in this subchapter, shall be guilty of a Class A misdemeanor for each such offense.

(b) For the purposes of this subchapter, each day of racing in violation of the provisions of this chapter shall be considered as a separate and distinct offense.

History. Acts 1957, No. 46, § 21; A.S.A. 1947, § 84-2747; Acts 2005, No. 1994, § 361.

23-110-404. [Repealed.]

Publisher's Notes. This section, concerning license for horse owner, horse trainer, jockey, and jockey agent required, was repealed by Acts 2007, No. 856, § 2.

The section was derived from Acts 1957, No. 46, § 20; 1975, No. 352, § 1; A.S.A. 1947, § 84-2746.

23-110-405. Wagering — Penalty for improper wagering.

(a)(1) Any franchise holder conducting a horse racing meet may provide a place or places in the race meeting grounds or enclosure at which it may conduct and supervise the pari-mutuel or certificate system of wagering.

(2) If conducted under the provisions of this chapter, the pari-mutuel or certificate method of wagering shall not under any circumstances be held or construed to be unlawful, all other laws or parts of laws of the State of Arkansas to the contrary notwithstanding.

(b)(1) With the prior approval of the Arkansas Racing Commission and consistent with applicable federal law, a franchise holder may enter into agreements and arrangements with other parties pursuant to which:

(A) Its patrons may wager on races run at other race tracks that are shown live or in any other manner approved by the commission, by television, or otherwise, at locations on the grounds at the Arkansas race track at any time or times during the calendar year; and

(B) Its races are shown live or in any other manner approved by the commission at other race tracks and locations.

(2) Such agreements and arrangements shall specify all financial, wagering, distribution, and other details that shall govern. To that end, the provisions of §§ 23-110-402 and 23-110-407 and any other inconsistent provisions shall not be applicable to such agreements and arrangements.

(3)(A) For all races simulcast to the grounds of the franchise holder's Arkansas race track from other race tracks and races conducted in the past and rebroadcast by electronic means and shown on a delayed or replayed basis on the grounds of the franchise holder's Arkansas race track under subdivision (b)(1) of this section, the franchise holder shall withhold and pay to the commission as a privilege tax for the use and benefit of the State of Arkansas one percent (1%) of all moneys wagered on the races on the grounds of the franchise holder's Arkansas race track.

(B) The difference between the two percent (2%) rate being withheld and so paid by the franchise holder to the State of Arkansas on wagers on the races described in subdivision (b)(3)(A) of this section under rules and regulations of the commission in effect prior to the enactment of this subdivision (b)(3) and the one percent (1%) rate established in subdivision (b)(3)(A) of this section shall be withheld by the franchise holder from wagers on such races and set aside by the franchise holder in a separate account to be used only for purses and construction, for debt service on money borrowed by the franchise holder for construction, or for promotions to encourage patronage and tourism, in accordance with the provisions of § 23-110-407(a)(3).

(c) No franchise holder shall permit any person under eighteen (18) years of age to be a patron of the pari-mutuel or certificate system of wagering conducted or supervised by it.

(d)(1)(A) However, nothing contained in this section shall be construed to permit the pari-mutuel or certificate method of wagering upon any race track unless the track is licensed as provided by this chapter.

(B) It is declared to be unlawful for any franchise holder to permit, conduct, or supervise upon any race track any pari-mutuel or certificate method of wagering except in accordance with the provisions of this chapter.

(2)(A) There shall be no wagering on the results of any races except under the pari-mutuel or certificate method of wagering as provided for in this section, and then only by the installation and use of equipment approved by the commission.

(B) Any franchise holder using or permitting wagering or any person wagering under any other method at a licensed race track shall be guilty of a Class D felony.

(e)(1) With the prior approval of the commission and pursuant to rules adopted by the commission, a franchise holder's patrons with money on deposit in an account with the franchise holder may place wagers by communication through telephone or other mobile device or

through other electronic means on races conducted at the franchise holder's race track facility and horse races or greyhound races at other racetracks, whether or not the patron is located on the grounds of the franchise holder's race track facility when placing the wager.

(2) Wagers accepted by the franchise holder under this subsection shall be treated for all purposes under this chapter as a wager made by the patron on the grounds of the franchise holder's race track facility.

History. Acts 1957, No. 46, § 22; A.S.A. 1947, § 84-2748; Acts 1987, No. 440, § 3; 1989, No. 12, § 2; 1999, No. 10, § 1; 2001, No. 1294, § 2; 2005, No. 1994, § 485; 2013, No. 350, § 5.

Amendments. The 2013 amendment added (e).

23-110-411. Admission tax.

(a) Each franchise holder authorized to conduct a race meet under this chapter shall pay to the Arkansas Racing Commission for the use and benefit of the State of Arkansas either ten percent (10%) of all moneys received each day from admissions paid by persons attending the races at the meeting or the sum of ten cents (10¢) on each and every paid admission, whichever sum is the greater. All payments provided in this section shall be made each day of any and every race meeting.

(b)(1) The issuance of all tax-free passes shall be by the franchise holder or its employees or agents. The commission shall have no authority over the issuance or distribution of such passes.

(2) It shall be unlawful for any person, corporation, firm, partnership, or any other entity to sell or offer for sale, for any consideration, any tax-free pass issued by the commission for general admission to the racing facility of any franchise holder.

(3) Any person, corporation, firm, partnership, or other entity that sells or offers for sale tax-free passes shall be guilty of a Class B misdemeanor upon conviction for each such offense.

History. Acts 1957, No. 46, § 24; A.S.A. 1947, § 84-2750; Acts 1991, No. 664, § 1; 1991, No. 1020, § 1; 1999, No. 1508, §§ 7, 10; 2005, No. 1994, § 239.

23-110-415. Failure to pay tax.

(a) Any franchise holder failing or refusing to pay the amount found to be due the Arkansas Racing Commission from any tax provided for or imposed by this chapter shall be guilty of a violation and upon conviction shall be punished by a fine of not more than five thousand dollars (\$5,000), in addition to the amount due from the franchise holder as provided in this chapter.

(b) All fines paid into any court of this state by a franchise holder found guilty of violating this section shall be paid over by the clerk of the court to the commission within ten (10) days after it has been paid to the clerk by the franchise holder.

History. Acts 1957, No. 46, § 26; A.S.A. 1947, § 84-2752; Acts 2005, No. 1994, § 156.

CHAPTER 111

ARKANSAS GREYHOUND RACING LAW

SUBCHAPTER.

2. ARKANSAS RACING COMMISSION.
3. FRANCHISES GENERALLY.
4. OFFICERS, DIRECTORS, STOCKHOLDERS, ETC., OF FRANCHISES.
5. CONDUCT OF MEETS.

SUBCHAPTER 1 — GENERAL PROVISIONS

23-111-105. Racing passes.

A.C.R.C. Notes. Acts 2013, No. 120, § 6, provided: “RACING PASS RESTRICTIONS. The Director of the Department of Finance and Administration shall set a maximum number of racing passes to be printed and issued annually and it shall

not be less than the number printed in 1990.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

SUBCHAPTER 2 — ARKANSAS RACING COMMISSION

SECTION.

- 23-111-203. Powers and duties generally.
 23-111-205. Hearings.

Effective Dates. Acts 2007, No. 856, § 6: Apr. 3, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission is responsible for licensing individuals and businesses that wish to be involved in conducting electronic games of skill and thoroughbred horse and greyhound racing in the State of Arkansas; that there is an immediate need for the Arkansas Racing Commission to obtain state and federal background investigations for potential licensees; and that this act provides the necessary authorization for the Arkansas Racing Commission to obtain the background investigations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by

the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 350, § 8: Mar. 14, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission’s authority to impose certain fees and penalties will expire unless specific statutory authority to assess such fees and penalties is enacted and becomes law; and the Arkansas Racing Commission’s power to assess such fees and penalties is imperative to the Arkansas Racing Commission’s ability to effectively supervise and regulate, in the public interest, horse racing and greyhound racing in Arkansas. It is further found and determined by the General Assembly of the State of Arkansas that there would be a loss of revenue to the state if wagers on

horse racing and greyhound racing are not permitted to be placed by additional forms of communication by patrons of Arkansas horse racing and greyhound racing tracks, whether or not the patron is located on the grounds of the race track facility when placing the wager. Therefore, an emergency is declared to exist and this act being immediately necessary for the pres-

ervation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-111-203. Powers and duties generally.

(a) Subject to the limitations and conditions as in this chapter or other applicable law provided, the Arkansas Racing Commission shall have sole jurisdiction over the business and the sport of greyhound racing in the state where the racing is permitted for any stake, purse, or reward.

(b) In exercising the jurisdiction as provided in subsection (a) of this section, but without necessarily being limited to the following, it shall be the function, power, and duty of the commission to:

- (1) Grant franchises to conduct greyhound races;
- (2) Approve dates for each racing meet and issue permits therefor;
- (3) Issue licenses to:
 - (A) An attendant;
 - (B) A franchise holder's employee;
 - (C) A greyhound handler;
 - (D) A kennel employee;
 - (E) A kennel helper;
 - (F) A greyhound owner;
 - (G) A greyhound trainer;
 - (H) An assistant greyhound trainer;
 - (I) A veterinarian;
 - (J) A veterinarian assistant; and
 - (K) An authorized agent, contractor, vendor, or other person employed or involved with the care of greyhounds or greyhound racing on the grounds of the licensed racetrack;
- (4) Establish by rule the license fees, not to exceed one hundred fifty dollars (\$150) per applicant, for a license issued under subdivision (b)(3) of this section;
- (5) Collect and deposit into the State Treasury all fees for franchises and licenses, all taxes and other imposts, and all other moneys due the State of Arkansas in relation to greyhound racing;
- (6) Hear and determine all matters properly coming before the commission and grant rehearings thereon; and
- (7)(A) Take other action, not inconsistent with law, as it may deem necessary or desirable to supervise and regulate and to effectively control in the public interest greyhound racing in the State of Arkansas, including without limitation:

- (i) Imposing fines in an amount not to exceed one hundred thousand dollars (\$100,000) per violation of a rule of the commission;
- (ii) Issuing orders;
- (iii) Ordering the forfeiture of purse money won by a disqualified greyhound;
- (iv) Prescribing conditions under which greyhound racing shall be conducted by a franchise holder;
- (v) Promulgating rules;
- (vi) Redistributing forfeited purse money; and
- (vii) Suspending or revoking licenses.

(B) The commission shall exercise its authority under this subsection in a reasonable manner.

(C) The holder of a franchise or a taxpayer may appeal an action of the commission to the Pulaski County Circuit Court.

(c)(1)(A) An applicant shall be fingerprinted to determine an applicant's suitability to be issued a license as a greyhound owner or trainer.

(B) The fingerprints shall be forwarded by the commission to the Department of Arkansas State Police for statewide criminal and noncriminal background checks.

(C) After completion of the statewide criminal and noncriminal background checks, the fingerprints shall be forwarded by the department to the Federal Bureau of Investigation for a national criminal history record check.

(2) The applicant shall sign a release that authorizes the:

(A) Department to forward the applicant's fingerprint card to the Federal Bureau of Investigation for a national criminal history record check; and

(B) Release of the results of the statewide criminal and noncriminal background checks and the national criminal history record check to the commission.

(3)(A) Any information received by the commission from the statewide criminal and noncriminal background check and the national criminal history record check shall be kept confidential and may be used by the commission only for the purpose of determining the applicant's suitability to be licensed by the commission.

(B) The commission may disclose any information under subdivision (c)(3)(A) of this section to the applicant or the applicant's duly authorized representative.

(4) No statewide criminal and noncriminal background checks or national criminal history record check shall be required of applicants for certain classes of licenses that have been exempted from investigation by rules promulgated by the commission.

(5) The commission shall promulgate rules to implement this subsection.

1947, § 84-2819; Acts 2007, No. 856, § 3; 2013, No. 350, §§ 3, 4.

Amendments. The 2013 amendment rewrote (b)(3), (b)(4), and (b)(7).

23-111-205. Hearings.

(a)(1) In the event any franchise holder or person is aggrieved by any action of the Arkansas Racing Commission, he or she shall be entitled to a hearing by the commission.

(2)(A) The hearing shall be held at such place in the State of Arkansas and at such time as the commission may designate.

(B) Notice shall be served on the party affected by mailing the notice of the time and place that the hearing will be held by registered or certified United States mail to the party affected.

(3) In conducting the hearing, the commission shall not be bound by technical rules of evidence.

(4) Any party affected in the hearing may be represented by counsel and shall have the right to introduce evidence, and the commission may in its discretion likewise be represented by counsel at the hearing. The counsel shall participate in the conduct of the hearing for and on behalf of the commission.

(b)(1) For purposes of conducting a hearing, the commission shall have the power to administer oaths, issue subpoenas, and compel the attendance and testimony of witnesses.

(2) Any person who has been served with a subpoena to appear and testify issued by the commission in the course of an inquiry or hearing conducted under the provisions of this chapter and who shall refuse and neglect to appear or testify relative to the hearing as commanded in the subpoena shall be guilty of a violation and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

(3) In connection with any hearing, the commission or the aggrieved may cause the deposition of witnesses within or without the state to be taken in the manner prescribed by existing statutes for the taking of depositions in this state.

(c) All hearings shall be held before at least three (3) members of the commission, and the concurrence of at least three (3) members of the commission shall be necessary for any finding or order.

(d) At the conclusion of the hearing, the commission shall make its findings to be the basis for the action taken by the commission. The findings and order shall be subject to review in the Pulaski County Circuit Court, from which an appeal may be taken to the Supreme Court.

History. Acts 1957, No. 191, § 15; 1965, No. 176, § 4; A.S.A. 1947, § 84-2830; Acts 2005, No. 1994, § 157.

SUBCHAPTER 3 — FRANCHISES GENERALLY

SECTION.

23-111-306. Subsequent referendum elections.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-111-306. Subsequent referendum elections.

(a) After the elapse of not less than four (4) years next following the date of any election conducted pursuant to § 23-111-304, the county board of election commissioners shall call a special election in accordance with § 7-11-201 et seq. on the proposition of continuing greyhound racing in the county. The election shall be called upon petitions filed with it containing the signatures of qualified electors of the county of not less than five percent (5%) of the total number voting in the election for county clerk of the county at the next preceding general election, together with a sum of money estimated by the board as sufficient to pay all expenses of the election.

(b)(1) The date of the special election shall be fixed by the board on a day not more than ninety (90) days following the date of filing the petitions. The deposit of the funds as provided in subsection (a) of this section and the election shall be conducted and shall be subject to contest under the general election laws of this state.

(2) The proposition printed on the ballot shall be "FOR Greyhound Racing" and "AGAINST Greyhound Racing".

(3) By published notice, the board shall proclaim the results of the election and shall also certify the results to the Arkansas Racing Commission.

(4) All contests in relation to the results of the election shall be commenced within twenty (20) days next following the date of publication of notice as provided in subsection (a) of this section.

(c) If a majority of the qualified electors of the county voting on the question shall disapprove the continuance of greyhound racing, the franchise held by the corporation shall, ipso facto, be null and void as of the final date on which a contest of the results of the election may be

commenced or, in the event of contest, upon the date of final determination of the issue.

History. Acts 1957, No. 191, § 10; 1968 (2nd Ex. Sess.), No. 15, § 1; A.S.A. 1947, § 84-2825; Acts 2005, No. 2145, § 61; 2007, No. 1049, § 83; 2009, No. 1480, § 101.

Amendments. The 2009 amendment substituted “§ 7-11-201 et seq.” for “§ 7-5-103(b)” in (a).

SUBCHAPTER 4 — OFFICERS, DIRECTORS, STOCKHOLDERS, ETC., OF FRANCHISES

SECTION.

23-111-406. Electoral and residency requirement.

23-111-406. Electoral and residency requirement.

(a) A majority of all officers and directors of any greyhound dog track in this state shall be qualified electors of this state who have resided in the county in which the track is located for a period of not less than two (2) years and shall maintain a residence in the county during their tenure as officers or directors thereof.

(b) Any person who may be elected or selected as an officer or director of any greyhound dog track, prior to his or her election or selection, shall submit to the Arkansas Racing Commission a duly verified affidavit setting forth information indicating whether he or she is a qualified elector of this state, his or her place of residence, and the period of time during which he or she has resided at his or her place of residence, in order that the commission may determine that the provisions of this section are being complied with.

(c) If there is any change in any of the material facts noted on the verified affidavit filed with the commission by the officer or director of a greyhound dog track, the officer or director, within thirty (30) days after the occurrence of the change, shall submit a new verified affidavit to the commission as required in this section, noting the change.

(d) Any person who furnishes false information in the affidavit filed with the commission as required in this section or fails to file a replacement verified affidavit with the commission within thirty (30) days after the change of any material fact noted on the affidavit previously filed with the commission shall be guilty of a Class A misdemeanor.

History. Acts 1969, No. 285, §§ 1, 2; 2823.10, 84-2823.11; Acts 2005, No. 1994, 1981, No. 443, §§ 1, 2; A.S.A. 1947, §§ 84- § 232.

SUBCHAPTER 5 — CONDUCT OF MEETS

SECTION.

23-111-502. Racing days and hours generally.

SECTION.

23-111-507. [Repealed.]
23-111-508. Wagering.

SECTION.

23-111-510. Admission tax.

23-111-513. Failure to pay tax.

Effective Dates. Acts 2007, No. 856, § 6: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission is responsible for licensing individuals and businesses that wish to be involved in conducting electronic games of skill and thoroughbred horse and greyhound racing in the State of Arkansas; that there is an immediate need for the Arkansas Racing Commission to obtain state and federal background investigations for potential licensees; and that this act provides the necessary authorization for the Arkansas Racing Commission to obtain the background investigations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 350, § 8: Mar. 14, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas

Racing Commission's authority to impose certain fees and penalties will expire unless specific statutory authority to assess such fees and penalties is enacted and becomes law; and the Arkansas Racing Commission's power to assess such fees and penalties is imperative to the Arkansas Racing Commission's ability to effectively supervise and regulate, in the public interest, horse racing and greyhound racing in Arkansas. It is further found and determined by the General Assembly of the State of Arkansas that there would be a loss of revenue to the state if wagers on horse racing and greyhound racing are not permitted to be placed by additional forms of communication by patrons of Arkansas horse racing and greyhound racing tracks, whether or not the patron is located on the grounds of the race track facility when placing the wager. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-111-502. Racing days and hours generally.

(a)(1) Upon application of the dog racing franchise holder, the Arkansas Racing Commission may authorize each dog racing franchise holder to conduct during any calendar year greyhound racing on the days and during the hours as determined by the commission and as set forth in its rules.

(2) The commission's rules and regulations shall be in the best interests of the dog racing franchisee, kennel owners, and greyhound racing in the State of Arkansas.

(3) Greyhound racing on Easter Sunday or Christmas Day is prohibited.

(b) The racing days provided for under §§ 23-111-503 — 23-111-505 shall be conducted on the days and during the hours determined by the commission under subsection (a) of this section.

History. Acts 1985, No. 924, § 1; A.S.A. 1947, § 84-2848; Acts 1987, No. 383, § 1; 1989, No. 238, § 1; 1995, No. 342, § 1; 1995, No. 347, § 1; 2013, No. 351, § 1.

Amendments. The 2013 amendment rewrote the section catchline and the section.

23-111-505. Additional racing days for benefit of indigent patients, etc.

A.C.R.C. Notes. Acts 2013, No. 1443, § 55, provided: "CREDIT TO THE INDIGENT PATIENTS FUND.

"(b) All revenue derived from the pari-mutuel tax at the fifteen (15) additional days of racing authorized by subsection (a) of Ark. Code 23-111-505 after monies have been remitted by the franchise holder to Mid-South Community College as may be provided by law, shall be deposited with the Treasurer of State as special revenue for credit to the Indigent Patients Fund, to be used to defray the cost of hospitalization and other medical services of indigent Arkansas patients in health care facilities

by Mississippi County, Poinsett County, Cross County, St. Francis County and Lee County for which the county has not received total reimbursement. Each county shall certify to the Chief Fiscal Officer of the State the amount of the unreimbursed medical expenses under such procedures and such detail as required by the Department of Finance and Administration. The amount available to each county shall be no more than one-fifth (1/5) of the total funds available or the amount certified of unreimbursed medical expenses, whichever is less."

23-111-507. [Repealed.]

Publisher's Notes. This section, concerning license for greyhound owner and greyhound trainer required, was repealed by Acts 2007, No. 856, § 4. The section

was derived from Acts 1957, No. 191, § 16; 1975, No. 352, § 2; A.S.A. 1947, § 84-2831.

23-111-508. Wagering.

(a)(1) Any franchise holder conducting a greyhound racing meet may provide places in the race meeting grounds, or enclosure, at which it may conduct and supervise the pari-mutuel or certificate system of wagering by patrons on the races conducted by the franchise holder at the meeting.

(2) The pari-mutuel or certificate method of wagering upon races held at the race track, within the race track, and at the racing meet shall not under any circumstances, if conducted under the provisions of this chapter, be held or construed to be unlawful, all other laws or parts of laws of the State of Arkansas to the contrary notwithstanding.

(b) No other place or method of wagering shall be used or permitted by the franchise holder, unless permitted under subsection (d) or subsection (e) of this section, nor shall the pari-mutuel or certificate system of wagering be conducted on any races except races at the race track where the franchise holder holds a current license issued by the Arkansas Racing Commission.

(c) No franchise holder shall permit any minor to be a patron of the pari-mutuel or certificate system of wagering conducted or supervised by it.

(d)(1)(A) However, nothing contained in this section shall be construed to permit the pari-mutuel or certificate method of wagering upon any race track unless the track is licensed as provided by this chapter.

(B) It is declared to be unlawful for any franchise holder to permit, conduct, or supervise any pari-mutuel or certificate method of wagering upon any race track except in accordance with the provisions of this chapter.

(2) There shall be no wagering on the results of any races except under the pari-mutuel or certificate method of wagering, as provided in this chapter, and then only by the installation and use of equipment approved by the commission.

(3) In addition to the pari-mutuel or certificate system of wagering as authorized by this chapter, the commission is authorized and directed to establish and adopt rules and regulations permitting the conduct of pari-mutuel or certificate system of wagering upon racing, either horse or greyhound, shown live or in any other manner approved by the commission by television or otherwise to or from the premises of the franchise holder.

(4) Any franchise holder using or permitting wagering or any person wagering under any other method at a licensed race track shall be guilty of a Class D felony for each such offense.

(e)(1) With the prior approval of the commission and pursuant to rules adopted by the commission, a franchise holder's patrons with money on deposit in an account with the franchise holder may place wagers by communication through telephone or other mobile device or through other electronic means on races conducted at the franchise holder's race track facility and horse races or greyhound races at other racetracks, whether or not the patron is located on the grounds of the franchise holder's race track facility when placing the wager.

(2) Wagers accepted by the franchise holder under this subsection shall be treated for all purposes under this chapter as a wager made by the patron on the grounds of the franchise holder's race track facility.

History. Acts 1957, No. 191, § 18; A.S.A. 1947, § 84-2833; Acts 1987, No. 383, § 5; 1989, No. 238, § 3; 1999, No. 473, § 1; 2005, No. 1994, § 486; 2013, No. 350, §§ 6, 7.

Amendments. The 2013 amendment inserted "unless permitted under subsection (d) or subsection (e) of this section" in (b); and added (e).

23-111-510. Admission tax.

(a)(1) Each franchise holder authorized to conduct a race meeting under this chapter shall pay to the Arkansas Racing Commission for the use and benefit of the State of Arkansas either ten percent (10%) of all moneys received each day from admissions paid by persons attend-

ing the races at the meeting or the sum of ten cents (10¢) on each and every paid admission, whichever sum is the greater.

(2) All payments provided in this section shall be made each day of any and every race meeting.

(b)(1) The issuance of all tax-free passes shall be by the franchise holder or its employees or agents. The commission shall have no authority over the issuance or distribution of the passes.

(2) It shall be unlawful for any person, corporation, firm, partnership, or any other entity to sell or offer for sale for any consideration any tax-free pass issued by the commission for general admission to the racing facility of any franchise holder.

(3) Any person, corporation, firm, partnership, or other entity that sells or offers for sale tax-free passes shall upon conviction be guilty of a Class B misdemeanor.

History. Acts 1957, No. 191, § 20; 664, § 2; 1991, No. 1020, § 2; 1999, No. A.S.A. 1947, § 84-2835; Acts 1991, No. 1508, §§ 11, 12; 2005, No. 1994, § 240.

23-111-513. Failure to pay tax.

(a) Any franchise holder failing or refusing to pay the amount found to be due the Arkansas Racing Commission from any tax provided for or imposed by this chapter shall be guilty of a violation and upon conviction shall be punished by a fine of not more than five thousand dollars (\$5,000) in addition to the amount due from the franchise holder as provided in this chapter.

(b) All fines paid into any court of this state by a franchise holder found guilty of violating this section shall be paid over by the clerk of the court to the commission within ten (10) days after the fines shall have been paid to the clerk by the franchise holder.

History. Acts 1957, No. 191, § 22; A.S.A. 1947, § 84-2837; Acts 2005, No. 1994, § 158.

CHAPTER 112

ARKANSAS MOTOR VEHICLE COMMISSION ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS MOTOR VEHICLE COMMISSION.
3. LICENSING AND REGULATION.
4. UNLAWFUL PRACTICES.
5. HEARINGS AND APPEALS.
6. USED MOTOR VEHICLE BUYERS PROTECTION.
8. SPECIAL MOTORCYCLE EVENTS.
9. RECREATIONAL VEHICLE SPECIAL EVENTS.
10. RECREATIONAL VEHICLE FRANCHISE ACT. [EFFECTIVE JANUARY 1, 2014.]

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.	SECTION.
23-112-103. Definitions. [Effective until January 1, 2014.]	23-112-105. Civil damages. [Effective January 1, 2014.]
23-112-103. Definitions. [Effective January 1, 2014.]	23-112-107. Motor vehicle event data recorder — Data ownership.
23-112-105. Civil damages. [Effective until January 1, 2014.]	

A.C.R.C. Notes. Acts 2013, No. 36, § 3, provided: “CONSUMER PROTECTION.

Protecting the consumer is a critical purpose of the Arkansas Motor Vehicle Commission. Therefore, of the total amount appropriated under Section 2 of this Act for the operating expenses of the Arkansas Motor Vehicle Commission, seventeen thousand five hundred dollars (\$17,500) each fiscal year shall be allocated to consumer protection efforts. The Arkansas Motor Vehicle Commission will submit quarterly a written report to Arkansas Legislative Council on their Consumer Protection efforts.

“The Arkansas Motor Vehicle Commission will continue to develop additional programs and procedures that will expand consumer protection efforts.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

Effective Dates. Acts 2009, No. 756, § 25: Apr. 1, 2009. Emergency clause pro-

vided: “It is found and determined by the General Assembly of the State of Arkansas that motor vehicle dealers are experiencing economic difficulties related to the state of the national economy and the motor vehicle industry in particular; that an unprecedented number of motor vehicle dealers may terminate their franchises as a result of these economic conditions; and that this act is immediately necessary to assist dealers that are facing possible termination of their franchise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-101. Title.

CASE NOTES

Applicability.

Where a truck dealer and franchisee asserted that a truck manufacturer and franchisor granted greater price concessions to the dealer’s competitors, the dealer was not limited to the remedies provided by the Arkansas Motor Vehicle Commission Act, § 23-112-101 et seq., and could pursue remedies under the Ar-

kansas Franchise Practices Act, § 4-72-201 et seq. *Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp.*, 374 F.3d 701 (8th Cir. 2004), rehearing denied, — F.3d —, 2004 U.S. App. LEXIS 20914 (8th Cir. Oct. 6, 2004), rev’d, *Volvo Trucks N. Am., Inc. v. Reeder-Simco GMC, Inc.*, 546 U.S. 164, 126 S. Ct. 860, 163 L. Ed. 2d 663 (2006).

23-112-103. Definitions. [Effective until January 1, 2014.]

As used in this chapter:

(1) "Advertisement" means an oral, written, telecommunicated, graphic, pictorial, or other statement made in the course of soliciting business, including without limitation, a statement or representation made in a newspaper, magazine, Internet, or other publication or contained in a notice, sign, poster, display, circular, pamphlet, letter, or flyer, or made via radio, television, or any other medium;

(2) "All-terrain vehicle" means a motor vehicle that:

(A) Is an off-highway vehicle:

(i) Fifty inches (50") or less in width, having a dry weight of eight hundred pounds (800 lbs.) or less, and traveling on three (3) or more low pressure tires, with a seat designed to be straddled by the operator, a Class 1 all-terrain vehicle; or

(ii) With a width that exceeds fifty inches (50") or having a dry weight that exceeds eight hundred pounds (800 lbs.), traveling on four (4) or more low-profile, low-pressure tires, and having a bench seat, a Class 2 all-terrain vehicle;

(B) Has a seat for the operator and any passenger and handlebars or other steering mechanism for control; and

(C) Is used for any purpose, including, but not limited to, off-road, amphibious, or recreational travel;

(3) "Auto auction" means:

(A) Any person who operates or provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers;

(B) Any motor vehicle dealer licensed to sell used motor vehicles, selling motor vehicles using an auction format but not on consignment; and

(C) Any person who provides the facilities for or is in the business of selling motor vehicles in an auction format;

(4) "Branch location" means a secondary location:

(A) Identified in a license issued by the Arkansas Motor Vehicle Commission to a motor vehicle dealer; and

(B) Which is an established place of business other than the licensed location;

(5) "Broker" means a person who for any valuable consideration, whether received directly or indirectly, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

(A) A dealer or bona fide employee of a new motor vehicle dealer when acting on behalf of a new motor vehicle dealer;

(B) A representative or bona fide employee of a manufacturer, factory branch, or factory representative when acting on behalf of a manufacturer, factory branch, or factory representative;

(C) A representative or bona fide employee of a distributor or distributor branch when acting on behalf of a distributor or distributor branch; or

(D) At any point in the transaction, the bona fide owner of the vehicle involved in the transaction;

(6)(A) "Coerce" means compelling or attempting to compel by threatening, retaliating, using economic force, or by not performing or complying with:

(i) Any terms or provisions of the franchise or sales and service agreement;

(ii) The terms of this chapter; or

(iii) The rules promulgated by the Arkansas Motor Vehicle Commission.

(B) "Coerce" does not mean recommending, exposing, persuading, urging, or arguing;

(7) "Commission" means the Arkansas Motor Vehicle Commission created by this chapter;

(8) "Conversion" means a motor vehicle other than an exempted specialty vehicle that is substantially modified by a person, firm, or corporation other than the manufacturer or distributor of the chassis of the motor vehicle and that has not been the subject of a retail sale;

(9) "Distributor" means any person, resident or nonresident, who, in whole or in part, sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives;

(10) "Distributor branch" means a branch or division office similarly maintained by a distributor for the same purposes a factory branch or division is maintained;

(11) "Distributor representative" means a representative similarly employed by a distributor or distributor branch;

(12) "Factory branch" means a branch or division office maintained by a person, firm, association, corporation, or trust who manufactures or assembles new motor vehicles for sale to distributors, to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives;

(13) "Factory representative" means a representative employed by a:

(A) Person, firm, association, corporation, or trust that manufactures or assembles new motor vehicles; or

(B) Factory branch, for the purpose of making or promoting the sale of its new motor vehicles or for supervising or contacting its dealers or prospective dealers;

(14) "Franchise" means one (1) or more contracts between a franchised dealer as franchisee and either a manufacturer or a distributor, importer, second-stage manufacturer, or converter as franchiser under which:

(A) The franchisee is granted the right to sell, service, or sell and service new motor vehicles manufactured or distributed by the franchiser;

(B) The franchisee as an independent business is a component of the franchiser's distribution system;

(C) The franchise is substantially associated with the franchiser's trademark, trade name, or commercial symbol;

(D) The franchisee's business is substantially reliant on the franchiser for a continued supply of motor vehicles, parts, or accessories for the conduct of its business; or

(E)(i) Any right, duty, or obligation granted or imposed by this chapter is affected.

(ii) "Franchise" includes a written communication from a franchiser to a franchisee by which a duty is imposed upon the franchisee;

(15) "Good faith" means the duty of each party to any franchise and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party;

(16) "Licensed location" means the address designated as the primary business address of the motor vehicle dealer on the application submitted for approval of licensure;

(17) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, that manufactures or assembles new motor vehicles;

(18) "Motor vehicle" means a self-propelled vehicle having two (2) or more wheels that has as its primary purpose the transportation of a person, including without limitation all-terrain vehicles, automobiles, trucks, motorcycles, motor-driven cycles, motor scooters, motor homes, and low speed vehicles;

(19)(A)(i) "Motor vehicle dealer" means a person that is:

(a) Engaged in the business of selling, offering to sell, soliciting, or advertising the sale of servicing or repairing motor vehicles under a manufacturer's warranty; and

(b) Located at an established and permanent place of business under a franchise, sales and service agreement, or a bona fide contract in effect with a manufacturer or distributor.

(ii) "Motor vehicle dealer" includes any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale, regardless of the medium used, of commercial buses, school buses, or other multipassenger motor vehicles, or possessing them for the purpose of resale.

(B) "Motor vehicle dealer" does not include:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree, or order of any court;

(ii) Public officers while performing their duties as officers;

(iii) Employees of persons, corporations, or associations enumerated in subdivision (19)(B)(i) of this section when engaged in the specific performance of their duties as employees;

(iv) Specialty vehicle dealers;

(v) Financial institutions engaged in the leasing of motor vehicles; or

(vi) Used motor vehicle dealers licensed by the state under § 23-112-601 et seq.;

(20) "Motor vehicle lessor" means any person not excluded by subdivision (19) of this section engaged in the motor vehicle leasing or rental business;

(21) "Motor vehicle salesperson" means any person who:

(A) Is employed as a salesperson by a motor vehicle dealer whose duties include the selling or offering for sale of motor vehicles;

(B) For compensation of any kind, acts as a salesperson, agent, or representative of a motor vehicle dealer;

(C) Attempts to or in fact negotiates a sale of a motor vehicle owned partially or entirely by a motor vehicle dealer; and

(D) Uses the financial resources, line of credit, or floor plan of a motor vehicle dealer to purchase, sell, or exchange any interest in a motor vehicle;

(22) "New motor vehicle" means any motor vehicle, the legal title to which has never been transferred by a manufacturer, distributor, or franchised new motor vehicle dealer to an ultimate purchaser;

(23) "Off premises" means a location other than the address designated as the licensed location;

(24) "Person" means and includes, individually and collectively, individuals, firms, partnerships, copartnerships, associations, corporations, trusts, or any other form of business enterprise, or any legal entity;

(25)(A) "Relevant market area" means the area within a radius surrounding an existing dealer or the area of responsibility defined in the franchise and on file in the commission office, whichever is greater.

(B)(i) For all licensed new motor vehicle dealers, excluding motorcycles, motorized cycles, and motor-driven all-terrain vehicles, which include two-wheeled, three-wheeled, four-wheeled, six-wheeled, or eight-wheeled motorcycles, motorized cycles, and motor-driven all-terrain vehicles, the relevant market area shall be a radius of twenty (20) miles.

(ii) However, when a manufacturer is seeking to establish an additional new motor vehicle dealer, the relevant market area shall in all instances be the area within a radius of ten (10) miles around an existing dealer.

(C) For all licensed new motor vehicle dealers of motorcycles, motorized cycles, and motor-driven all-terrain vehicles, which include two-wheeled, three-wheeled, four-wheeled, six-wheeled, or eight-wheeled motorcycles, motorized cycles, and motor-driven all-terrain vehicles, the relevant market area shall in all instances be the area within a radius of thirty (30) miles around an existing dealer or the area of responsibility defined in the franchise and on file in the commission office, whichever is greater;

(26) "Retail sale" or "sale at retail" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a new motor vehicle to an ultimate purchaser for use as a consumer;

(27) "Second-stage manufacturer" or "converter" means a person, firm, or corporation that, prior to retail sale of a motor vehicle:

(A) Assembles, installs, or affixes a body, cab, or special equipment to a chassis; or

(B) Substantially adds to, subtracts from, or modifies a previously assembled or manufactured motor vehicle;

(28)(A) "Specialty vehicle" means a motor vehicle manufactured by a second-stage manufacturer by purchasing motor vehicle components, for example, frame and drive train, and completing the manufacture of finished motor vehicles for the purpose of resale, with the primary manufacturer warranty unimpaired, to a limited commercial market rather than the consuming public.

(B) "Specialty vehicles" includes garbage trucks, ambulances, fire trucks, limousines, hearses, and other similar limited-purpose vehicles as the commission may by regulation provide;

(29) "Temporary permit" means a license issued for one (1) week or less to a motor vehicle dealer who is licensed in another state for the purpose of displaying, offering to sell, selling, and soliciting the sales of motor vehicles at the time and place designated by the commission and only at an approved motor vehicle show in this state;

(30)(A) "Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a motor vehicle dealer purchasing in his or her capacity as a dealer, who in good faith purchases the new motor vehicle for purposes other than resale.

(B) "Ultimate purchaser" shall not include a person who purchases a vehicle for purposes of altering or remanufacturing the motor vehicle for future resale;

(31)(A) "Used motor vehicle" means a motor vehicle:

(i) For which title has been sold, bargained, exchanged, given away, or transferred from the person or corporation who first took ownership from the manufacturer, distributor, dealer, or agents thereof; or

(ii) So used as to have become what is commonly known as a "second hand motor vehicle" or a "previously owned motor vehicle".

(B) A new motor vehicle shall not be considered a used motor vehicle unless the motor vehicle has been:

(i) Placed in actual operation; and

(ii) Not held for resale by an owner that has:

(a) Been granted a certificate of title; and

(b) Registered the motor vehicle under the Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft Act, § 27-14-101 et seq.;

(32) "Used motor vehicle dealer" means any person, wholesaler, or auto auctioneer who, for a commission or with the intent to make a profit or gain of money or other thing of value:

(A) Sells, exchanges, rents, or leases with the option to purchase or own, or attempts to negotiate a sale or exchange of an interest in any used motor vehicle; or

(B) Is wholly or in part in the business of buying, selling, trading, or exchanging used motor vehicles, whether or not the used motor vehicles are owned by the person;

(33)(A) "Wholesaler" means any person, resident or nonresident, not excluded by subdivision (19) of this section, who, in whole or in part, sells used motor vehicles to motor vehicle dealers or purchases used vehicles for the purpose of resale.

(B) However, motor vehicle dealers who, incidental to their primary business, sell motor vehicles to other dealers are not considered wholesalers because of the incidental sales;

(34)(A) "Line make of a motor vehicle" means a group or series of motor vehicles that have the same brand identification or brand name, based upon the manufacturer's trademark, trade name, or logo.

(B) "Line make of a motor vehicle" does not include motor homes;

(35) "Line make of a motor home" means a specific series of recreational vehicle products that:

(A) Are identified by a common series trade name or trademark;

(B) Are targeted to a particular market segment, as determined by their decor, features, equipment, size, weight, and price range;

(C) Have lengths and interior floor plans that distinguish the recreational vehicles with substantially the same decor, equipment, features, price, and weight;

(D) Belong to a single distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body; and

(E) The manufacturer-dealer agreement authorizes a dealer to sell.

(36) "Low speed vehicle" means a motor vehicle:

(A) That is four (4) wheeled;

(B) Whose speed attainable in one (1) mile is more than twenty miles per hour (20 m.p.h.) and not more than twenty-five miles per hour (25 m.p.h.) on a paved level surface; and

(C) With a gross vehicle weight of less than three thousand pounds (3,000 lbs.).

History. Acts 1975, No. 388, § 3; 1985, No. 1032, § 1; 1985, No. 1058, § 1; A.S.A. 1947, § 75-2303; Acts 1987, No. 620, § 1; 1987, No. 645, §§ 1, 2; 1989, No. 65, §§ 1-3; 1989, No. 509, § 1; 1991, No. 411, § 3; 1991, No. 890, §§ 1-3; 1993, No. 383, § 5; 1997, No. 1154, §§ 3-7; 1999, No. 1042, § 1; 2001, No. 1053, § 1; 2003, No. 1098, §§ 1, 2; 2009, No. 756, §§ 1-5; 2011, No. 1005, §§ 1-3; 2013, No. 561, §§ 1, 2.

Publisher's Notes. For text of section effective January 1, 2014, see the following version.

Amendments. The 2009 amendment substituted "exempted specialty vehicle"

for "ambulance or firefighting vehicle" in (8); rewrote (18), (19)(A)(i), and (31); added (34) and (35); and made related and minor stylistic changes.

The 2011 amendment rewrote (6); inserted "or sell and service" preceding "new motor" in (14)(A); and deleted "and there is one (1) or more existing new motor vehicle dealers of the same line make within a ten-mile radius of the proposed dealer site" preceding "the relevant" in (25)(B)(ii).

The 2013 amendment substituted "motor homes, and low speed vehicles" for "and motor homes" in (18); and added (36).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of ssembly, Insurance Law, All-Terrain Ve-
Legislation, 2003 Arkansas General As- hicles, 26 U. Ark. Little Rock L. Rev. 483.

23-112-103. Definitions. [Effective January 1, 2014.]

As used in this chapter:

(1) "Advertisement" means an oral, written, telecommunicated, graphic, pictorial, or other statement made in the course of soliciting business, including without limitation, a statement or representation made in a newspaper, magazine, Internet, or other publication or contained in a notice, sign, poster, display, circular, pamphlet, letter, or flyer, or made via radio, television, or any other medium;

(2) "All-terrain vehicle" means a motor vehicle that:

(A) Is an off-highway vehicle:

(i) Fifty inches (50") or less in width, having a dry weight of eight hundred pounds (800 lbs.) or less, and traveling on three (3) or more low pressure tires, with a seat designed to be straddled by the operator, a Class 1 all-terrain vehicle; or

(ii) With a width that exceeds fifty inches (50") or having a dry weight that exceeds eight hundred pounds (800 lbs.), traveling on four (4) or more low-profile, low-pressure tires, and having a bench seat, a Class 2 all-terrain vehicle;

(B) Has a seat for the operator and any passenger and handlebars or other steering mechanism for control; and

(C) Is used for any purpose, including, but not limited to, off-road, amphibious, or recreational travel;

(3) "Auto auction" means:

(A) Any person who operates or provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers;

(B) Any motor vehicle dealer licensed to sell used motor vehicles, selling motor vehicles using an auction format but not on consign-ment; and

(C) Any person who provides the facilities for or is in the business of selling motor vehicles in an auction format;

(4) "Branch location" means a secondary location:

(A) Identified in a license issued by the Arkansas Motor Vehicle Commission to a motor vehicle dealer; and

(B) Which is an established place of business other than the licensed location;

(5) "Broker" means a person who for any valuable consideration, whether received directly or indirectly, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

(A) A dealer or bona fide employee of a new motor vehicle dealer when acting on behalf of a new motor vehicle dealer;

(B) A representative or bona fide employee of a manufacturer, factory branch, or factory representative when acting on behalf of a manufacturer, factory branch, or factory representative;

(C) A representative or bona fide employee of a distributor or distributor branch when acting on behalf of a distributor or distributor branch; or

(D) At any point in the transaction, the bona fide owner of the vehicle involved in the transaction;

(6)(A) "Coerce" means compelling or attempting to compel by threatening, retaliating, using economic force, or by not performing or complying with:

(i) Any terms or provisions of the franchise or sales and service agreement;

(ii) The terms of this chapter; or

(iii) The rules promulgated by the Arkansas Motor Vehicle Commission.

(B) "Coerce" does not mean recommending, exposing, persuading, urging, or arguing;

(7) "Commission" means the Arkansas Motor Vehicle Commission created by this chapter;

(8) "Conversion" means a motor vehicle other than an exempted specialty vehicle that is substantially modified by a person, firm, or corporation other than the manufacturer or distributor of the chassis of the motor vehicle and that has not been the subject of a retail sale;

(9) "Distributor" means any person, resident or nonresident, who, in whole or in part, sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives;

(10) "Distributor branch" means a branch or division office similarly maintained by a distributor for the same purposes a factory branch or division is maintained;

(11) "Distributor representative" means a representative similarly employed by a distributor or distributor branch;

(12) "Factory branch" means a branch or division office maintained by a person, firm, association, corporation, or trust who manufactures or assembles new motor vehicles for sale to distributors, to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives;

(13) "Factory representative" means a representative employed by a:

(A) Person, firm, association, corporation, or trust that manufactures or assembles new motor vehicles; or

(B) Factory branch, for the purpose of making or promoting the sale of its new motor vehicles or for supervising or contacting its dealers or prospective dealers;

(14) "Franchise" means one (1) or more contracts between a franchised dealer as franchisee and either a manufacturer or a distributor, importer, second-stage manufacturer, or converter as franchiser under which:

(A) The franchisee is granted the right to sell, service, or sell and service new motor vehicles manufactured or distributed by the franchiser;

(B) The franchisee as an independent business is a component of the franchiser's distribution system;

(C) The franchise is substantially associated with the franchiser's trademark, trade name, or commercial symbol;

(D) The franchisee's business is substantially reliant on the franchiser for a continued supply of motor vehicles, parts, or accessories for the conduct of its business; or

(E)(i) Any right, duty, or obligation granted or imposed by this chapter is affected.

(ii) "Franchise" includes a written communication from a franchiser to a franchisee by which a duty is imposed upon the franchisee;

(15) "Good faith" means the duty of each party to any franchise and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party;

(16) "Licensed location" means the address designated as the primary business address of the motor vehicle dealer on the application submitted for approval of licensure;

(17) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, that manufactures or assembles new motor vehicles;

(18) "Motor vehicle" means a self-propelled vehicle having two (2) or more wheels that has as its primary purpose the transportation of a person, including without limitation all-terrain vehicles, automobiles, trucks, motorcycles, motor-driven cycles, motor scooters, and low speed vehicles;

(19)(A)(i) "Motor vehicle dealer" means a person that is:

(a) Engaged in the business of selling, offering to sell, soliciting, or advertising the sale of servicing or repairing motor vehicles under a manufacturer's warranty; and

(b) Located at an established and permanent place of business under a franchise, sales and service agreement, or a bona fide contract in effect with a manufacturer or distributor.

(ii) "Motor vehicle dealer" includes any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale, regardless of the medium used, of commercial buses, school buses, or other multipassenger motor vehicles, or possessing them for the purpose of resale.

(B) "Motor vehicle dealer" does not include:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree, or order of any court;

(ii) Public officers while performing their duties as officers;

(iii) Employees of persons, corporations, or associations enumerated in subdivision (19)(B)(i) of this section when engaged in the specific performance of their duties as employees;

(iv) Specialty vehicle dealers;

(v) Financial institutions engaged in the leasing of motor vehicles;
or

(vi) Used motor vehicle dealers licensed by the state under § 23-112-601 et seq.;

(20) "Motor vehicle lessor" means any person not excluded by subdivision (19) of this section engaged in the motor vehicle leasing or rental business;

(21) "Motor vehicle salesperson" means any person who:

(A) Is employed as a salesperson by a motor vehicle dealer whose duties include the selling or offering for sale of motor vehicles;

(B) For compensation of any kind, acts as a salesperson, agent, or representative of a motor vehicle dealer;

(C) Attempts to or in fact negotiates a sale of a motor vehicle owned partially or entirely by a motor vehicle dealer; and

(D) Uses the financial resources, line of credit, or floor plan of a motor vehicle dealer to purchase, sell, or exchange any interest in a motor vehicle;

(22) "New motor vehicle" means any motor vehicle, the legal title to which has never been transferred by a manufacturer, distributor, or franchised new motor vehicle dealer to an ultimate purchaser;

(23) "Off premises" means a location other than the address designated as the licensed location;

(24) "Person" means and includes, individually and collectively, individuals, firms, partnerships, copartnerships, associations, corporations, trusts, or any other form of business enterprise, or any legal entity;

(25)(A) "Relevant market area" means the area within a radius surrounding an existing dealer or the area of responsibility defined in the franchise and on file in the commission office, whichever is greater.

(B)(i) For all licensed new motor vehicle dealers, excluding motorcycles, motorized cycles, and motor-driven all-terrain vehicles, which include two-wheeled, three-wheeled, four-wheeled, six-wheeled, or eight-wheeled motorcycles, motorized cycles, and motor-driven all-terrain vehicles, the relevant market area shall be a radius of twenty (20) miles.

(ii) However, when a manufacturer is seeking to establish an additional new motor vehicle dealer, the relevant market area shall in all instances be the area within a radius of ten (10) miles around an existing dealer.

(C) For all licensed new motor vehicle dealers of motorcycles, motorized cycles, and motor-driven all-terrain vehicles, which include two-wheeled, three-wheeled, four-wheeled, six-wheeled, or eight-wheeled motorcycles, motorized cycles, and motor-driven all-

terrain vehicles, the relevant market area shall in all instances be the area within a radius of thirty (30) miles around an existing dealer or the area of responsibility defined in the franchise and on file in the commission office, whichever is greater;

(26) "Retail sale" or "sale at retail" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a new motor vehicle to an ultimate purchaser for use as a consumer;

(27) "Second-stage manufacturer" or "converter" means a person, firm, or corporation that, prior to retail sale of a motor vehicle:

(A) Assembles, installs, or affixes a body, cab, or special equipment to a chassis; or

(B) Substantially adds to, subtracts from, or modifies a previously assembled or manufactured motor vehicle;

(28)(A) "Specialty vehicle" means a motor vehicle manufactured by a second-stage manufacturer by purchasing motor vehicle components, for example, frame and drive train, and completing the manufacture of finished motor vehicles for the purpose of resale, with the primary manufacturer warranty unimpaired, to a limited commercial market rather than the consuming public.

(B) "Specialty vehicles" includes garbage trucks, ambulances, fire trucks, limousines, hearses, and other similar limited-purpose vehicles as the commission may by regulation provide;

(29) "Temporary permit" means a license issued for one (1) week or less to a motor vehicle dealer who is licensed in another state for the purpose of displaying, offering to sell, selling, and soliciting the sales of motor vehicles at the time and place designated by the commission and only at an approved motor vehicle show in this state;

(30)(A) "Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a motor vehicle dealer purchasing in his or her capacity as a dealer, who in good faith purchases the new motor vehicle for purposes other than resale.

(B) "Ultimate purchaser" shall not include a person who purchases a vehicle for purposes of altering or remanufacturing the motor vehicle for future resale;

(31)(A) "Used motor vehicle" means a motor vehicle:

(i) For which title has been sold, bargained, exchanged, given away, or transferred from the person or corporation who first took ownership from the manufacturer, distributor, dealer, or agents thereof; or

(ii) So used as to have become what is commonly known as a "second hand motor vehicle" or a "previously owned motor vehicle".

(B) A new motor vehicle shall not be considered a used motor vehicle unless the motor vehicle has been:

(i) Placed in actual operation; and

(ii) Not held for resale by an owner that has:

(a) Been granted a certificate of title; and

(b) Registered the motor vehicle under the Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft Act, § 27-14-101 et seq.;

(32) “Used motor vehicle dealer” means any person, wholesaler, or auto auctioneer who, for a commission or with the intent to make a profit or gain of money or other thing of value:

(A) Sells, exchanges, rents, or leases with the option to purchase or own, or attempts to negotiate a sale or exchange of an interest in any used motor vehicle; or

(B) Is wholly or in part in the business of buying, selling, trading, or exchanging used motor vehicles, whether or not the used motor vehicles are owned by the person;

(33)(A) “Wholesaler” means any person, resident or nonresident, not excluded by subdivision (19) of this section, who, in whole or in part, sells used motor vehicles to motor vehicle dealers or purchases used vehicles for the purpose of resale.

(B) However, motor vehicle dealers who, incidental to their primary business, sell motor vehicles to other dealers are not considered wholesalers because of the incidental sales;

(34) “Line make of a motor vehicle” means a group or series of motor vehicles that have the same brand identification or brand name, based upon the manufacturer’s trademark, trade name, or logo; and

(35) “Low speed vehicle” means a motor vehicle:

(A) That is four (4) wheeled;

(B) Whose speed attainable in one (1) mile is more than twenty miles per hour (20 m.p.h.) and not more than twenty-five miles per hour (25 m.p.h.) on a paved level surface; and

(C) With a gross vehicle weight of less than three thousand pounds (3,000 lbs.).

History. Acts 1975, No. 388, § 3; 1985, No. 1032, § 1; 1985, No. 1058, § 1; A.S.A. 1947, § 75-2303; Acts 1987, No. 620, § 1; 1987, No. 645, §§ 1, 2; 1989, No. 65, §§ 1-3; 1989, No. 509, § 1; 1991, No. 411, § 3; 1991, No. 890, §§ 1-3; 1993, No. 383, § 5; 1997, No. 1154, §§ 3-7; 1999, No. 1042, § 1; 2001, No. 1053, § 1; 2003, No. 1098, §§ 1, 2; 2009, No. 756, §§ 1-5; 2011, No. 1005, §§ 1-3; 2013, No. 561, §§ 1, 2; 2013, No. 1043, §§ 1, 2.

Publisher’s Notes. For text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2009 amendment substituted “exempted specialty vehicle” for “ambulance or firefighting vehicle” in (8); rewrote (18), (19)(A)(i), and (31); added (34) and (35); and made related and minor stylistic changes.

The 2011 amendment rewrote (6); inserted “or sell and service” preceding “new motor” in (14)(A); and deleted “and there is one (1) or more existing new motor vehicle dealers of the same line make within a ten-mile radius of the proposed dealer site” preceding “the relevant” in (25)(B)(ii).

The 2013 amendment by No. 561 substituted “motor homes, and low speed vehicles” for “and motor homes” in (18); and added present (35).

The 2013 amendment by No. 1043 deleted “motor homes” from the end of (18); and deleted (34)(B) and former (35).

Effective Dates. Acts 2013, No. 1043, § 11: Jan. 1, 2014.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Insurance Law, All-Terrain Vehicles, 26 U. Ark. Little Rock L. Rev. 483. Legislation, 2003 Arkansas General As-

23-112-104. Injunction.

CASE NOTES

Cited: Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp., 374 F.3d 701 (8th Cir. 2004).

23-112-105. Civil damages. [Effective until January 1, 2014.]

(a) A licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with this chapter, other than a new automobile or truck dealer's failure to comply with § 23-112-301(d)(1) and (2) or with any rule or regulation promulgated by the Arkansas Motor Vehicle Commission under authority vested in it by this chapter, may recover reasonable damages and attorney's fees therefor in any court of competent jurisdiction.

(b)(1) Except as provided under subdivision (b)(2) of this section, if a motor vehicle dealer prevails in an action against a manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division under any provision of this chapter, the motor vehicle dealer shall also have a cause of action against the manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division for attorney's fees, if none have been awarded in an earlier administrative hearing.

(2) Subdivision (b)(1) of this section does not apply to motor vehicle dealers, manufacturers, or distributors of motor homes.

History. Acts 1975, No. 388, § 9; A.S.A. 1947, § 75-2309; Acts 1989, No. 678, § 3; 2011, No. 1005, § 4.

Publisher's Notes. For text of section effective January 1, 2014, see the following version.

Amendments. The 2011 amendment added the (a) designation; deleted "any provision of" following "comply with" in (a); and added (b).

23-112-105. Civil damages. [Effective January 1, 2014.]

(a) A licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with this chapter, other than a new automobile or truck dealer's failure to comply with § 23-112-301(d)(1) and (2) or with any rule or regulation promulgated by the Arkansas Motor Vehicle Commission under authority vested in it by this chapter, may recover reasonable damages and attorney's fees therefor in any court of competent jurisdiction.

(b) If a motor vehicle dealer prevails in an action against a manufacturer, distributor, second-stage manufacturer, importer, converter,

manufacturer branch or division, or distributor branch or division under any provision of this chapter, the motor vehicle dealer shall also have a cause of action against the manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division for attorney's fees, if none have been awarded in an earlier administrative hearing.

History. Acts 1975, No. 388, § 9; A.S.A. 1947, § 75-2309; Acts 1989, No. 678, § 3; 2011, No. 1005, § 4; 2013, No. 1043, § 3.

Publisher's Notes. For text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2011 amendment added the (a) designation; deleted "any

provision of" following "comply with" in (a); and added (b).

The 2013 amendment deleted "Except as provided under subdivision (b)(2) of this section" in (b) and deleted (b)(2).

Effective Dates. Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-107. Motor vehicle event data recorder — Data ownership.

(a) As used in this section:

(1) "Authorized representative" means a person who is the attorney-in-fact for an owner or a person who has been appointed the administrator or personal representative of the estate of the owner;

(2) "Motor vehicle event data recorder" means a factory-installed feature in a motor vehicle that does one (1) or more of the following:

(A) Records, stores, transmits, or dispenses any of the following information for the purpose of retrieval after a crash:

- (i) Vehicle speed;
- (ii) Vehicle direction;
- (iii) Vehicle location;
- (iv) Steering performance; or
- (v) Seat belt restraint status;

(B) Has the capacity to transmit information concerning a crash in which the motor vehicle has been involved to a central communications system when a crash occurs; or

(C) Includes a sensing and diagnostic module, restraint control module, electronic throttle control, or other similar component; and

(3) "Owner" means a person or entity:

(A) In whose name a motor vehicle is registered or titled;

(B) Who leases a motor vehicle for at least three (3) months;

(C) Who is entitled to possession of the motor vehicle as the purchaser under a security agreement; or

(D) Who is the authorized representative of the owner.

(b) At the time of a new vehicle purchase by a consumer from a dealership, an owner of a motor vehicle shall be given written notice by the seller or manufacturer that includes the following:

(1) The presence of the motor vehicle event data recorder in the motor vehicle;

(2) The type of motor vehicle event data recorder in the motor vehicle; and

(3) The type of data that is recorded, stored, or transmitted on the motor vehicle event data recorder.

(c) Except as specifically provided under subsections (d) and (f)-(i) of this section, the data on a motor vehicle event data recorder:

(1) Is private;

(2) Is exclusively owned by the owner of the motor vehicle; and

(3) Shall not be retrieved or used by another person or entity.

(d)(1) If a motor vehicle is owned by one (1) owner, then the owner of a motor vehicle may provide written consent in the form of a release signed by the owner that authorizes a person or entity to retrieve or use the data.

(2) If a motor vehicle is owned by more than one (1) person or entity and if all owners agree to release the data, then all owners must consent in writing by signing a release to authorize a person or entity to retrieve or use the data.

(3) A release to a person or entity under this subsection shall be limited to permission for data collection and compilation only and shall not authorize the release of information that identifies the owner of the vehicle.

(e)(1)(A) If a motor vehicle is equipped with a motor vehicle event data recorder and is involved in an accident in Arkansas, the owner of the motor vehicle at the time that the data is created shall own and retain exclusive ownership rights to the data.

(B) The ownership of the data shall not pass to a lienholder or to an insurer because the lienholder or insurer succeeds in ownership to the vehicle as a result of the accident.

(2) The data shall not be used by a lienholder or an insurer for any reason without a written consent in the form of a release signed by the owner of the motor vehicle at the time of the accident that authorizes the lienholder or insurer to retrieve or use the data.

(3) A lienholder or insurer shall not make the owner's consent to the retrieval or use of the data conditioned upon the payment or settlement of an obligation or claim. However, the insured is required to comply with all policy provisions, including any provision that requires the insured to cooperate with the insurer.

(4) An insurer or lessor of a motor vehicle shall not require an owner to provide written permission for the access or retrieval of information from a motor vehicle event data recorder as a condition of the policy or lease.

(f) Except as specifically provided under subsections (d) and (g)-(i) of this section, the data from a motor vehicle event data recorder shall only be produced without the consent of the owner at the time of the accident if:

(1) A court of competent jurisdiction in Arkansas orders the production of the data;

(2) A law enforcement officer obtains the data based on probable cause of an offense under the laws of the State of Arkansas; or

(3) A law enforcement officer, a firefighter, or an emergency medical services provider obtains the data in the course of responding to or

investigating an emergency involving physical injury or the risk of physical injury to any person.

(g) The Arkansas State Highway and Transportation Department may retrieve data from a motor vehicle event data recorder if the data is used for the following purposes:

- (1) Preclearing weigh stations;
- (2) Automating driver records of duty status as authorized by the United States Department of Transportation;
- (3) Replacing handwritten reports for any fuel tax reporting or other mileage reporting purpose; or
- (4) Complying with a state or federal law.

(h) To protect the public health, welfare, and safety, the following exceptions shall be allowed regarding the retrieval of data from a motor vehicle event data recorder:

(1) To determine the need or to facilitate emergency medical care for the driver or passenger of a motor vehicle that is involved in a motor vehicle crash or other emergency, including obtaining data from a company that provides subscription services to the owners of motor vehicles for in-vehicle safety and security communications systems;

(2) To facilitate medical research of the human body's reaction to motor vehicle crashes if:

(A) The identity of the owner or driver is not disclosed in connection with the retrieved data; and

(B) The last four (4) digits of the vehicle identification number are not disclosed; or

(3) To diagnose, service, or repair a motor vehicle.

(i) Notwithstanding any other provision of this section, the use of data from a motor vehicle event data recorder shall not be permitted into evidence in a civil or criminal matter pending before a court in the State of Arkansas unless it is shown to be relevant and reliable pursuant to the Arkansas Rules of Evidence.

(j)(1) If a motor vehicle is equipped with a motor vehicle event data recorder that is capable of recording, storing, transmitting, or dispensing information as described in this section and that capability is part of a subscription service, then the information that may be recorded, stored, transmitted, or dispensed shall be disclosed in the subscription agreement.

(2) Subsections (c), (d), and (f)-(h) of this section shall not apply to subscription services that meet the requirements of this subsection.

(k)(1) A new motor vehicle dealer, manufacturer, and distributor shall be immune and held harmless against liability for the privacy of information contained in motor vehicle databases, including without limitation recording devices, global-positioning systems, navigation devices, or any in-vehicle data not controlled by the dealer.

(2) This subsection does not affect the notice requirements under subsection (b) of this section.

(l) The Arkansas Motor Vehicle Commission shall administer this section and may promulgate rules for the administration of this section.

History. Acts 2005, No. 1419, § 1; 2009, No. 148, § 1; 2011, No. 1005, §§ 5, 6.

A.C.R.C. Notes. This section was formerly codified as § 27-37-103.

Acts 2009, No. 148, § 2, provided: “For administrative convenience, the Arkansas Code Revision Commission shall remove Arkansas Code § 27-37-103 including the

amendment made in this act from Title 27 and recodify the provision under the ‘Arkansas Motor Vehicle Commission Act’, Arkansas Code § 23-112-101 et seq.”

Amendments. The 2009 amendment added (k).

The 2011 amendment inserted present (k) and redesignated former (k) as (l).

SUBCHAPTER 2 — ARKANSAS MOTOR VEHICLE COMMISSION

SECTION.

23-112-201. Arkansas Motor Vehicle Commission — Creation — Members — Officers.

SECTION.

23-112-205. Disposition of funds.

23-112-206. [Repealed.]

Effective Dates. Acts 2005, No. 2311, § 7: July 1, 2005. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2005 is essential to the operation of the agency for which the appropriations in this Act are provided; with the exception that Section 4 in this Act shall be in full force and effect from and after the date of its passage and approval, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2005, with the exception that Section 4 in this Act shall be in full force and effect from and after the date of its passage and approval, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect from and after July 1, 2005; with the exception that Section 4 in this Act shall be in full force and effect from and after the date of its passage and approval.”

Acts 2007, No. 530, § 10: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007.”

23-112-201. Arkansas Motor Vehicle Commission — Creation — Members — Officers.

(a) There is created the Arkansas Motor Vehicle Commission, hereinafter referred to as the commission, to be composed of nine (9) members to be appointed by the Governor for terms of seven (7) years, subject to confirmation by the Senate.

(b)(1) One (1) commissioner shall be appointed from each of the four (4) congressional districts of the state as constituted July 1, 1975, and five (5) members of the commission, including the consumer representative and the representative of the elderly, shall be appointed from the state at large.

(2)(A) Four (4) members of the commission shall be licensees or shall be qualified as licensees under the provisions of this chapter at the time of their appointment.

(B) Five (5) members of the commission shall be appointed from the public at large, including the consumer representative and the representative of the elderly.

(C)(i) No more than four (4) members of the commission shall at any time:

(a) Be licensees under this chapter;

(b) Have any financial interest in or be an officer or an employee of a licensee under this chapter; or

(c) Be employed by or own a business or organization that directly or indirectly profits from the sale of new motor vehicles.

(ii) At least one (1) of the members shall be licensed as a dealer of franchise motorcycles.

(3)(A) The consumer representative and the representative of the elderly shall not be actively engaged in or retired from the businesses regulated by this chapter.

(B) The two (2) positions may not be held by the same person.

(C) Both shall be full voting members.

(D) The representative of the elderly shall:

(i) Be sixty (60) years of age or older;

(ii) Not be employed by or own any business or organization that directly or indirectly profits from the sale of new motor vehicles; and

(iii) Only have experiences with the sale of a new motor vehicle as a consumer.

(E) The consumer representative shall:

(i) Not be employed by or own any business or organization that directly or indirectly profits from the sale of new motor vehicles; and

(ii) Only have experiences with the sale of a new motor vehicle as a consumer.

(4) Each of the members appointed shall be a citizen of the United States, a resident of the State of Arkansas, and a qualified elector of the jurisdiction from which appointed, and each shall be of good moral character.

(c) In the event a vacancy on the commission occurs due to death, resignation, or other reason, the vacancy shall be filled for the unexpired portion of the term by appointment of the Governor, subject to confirmation by the Senate, of a person meeting the same qualifications required for the initial appointment.

(d) Each commission member shall serve until his or her successor is appointed and qualified.

(e) The commission shall select by majority vote of its members one (1) of its members as a chair, one (1) as a vice chair, and one (1) as a secretary.

(f)(1) The Chair of the Arkansas Motor Vehicle Commission and members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(2) The chair shall require itemized statements of all reimbursable expenses and shall audit the statements or cause them to be audited before approving them for payment.

History. Acts 1975, No. 388, § 4; 1977, — 6-619, 6-623 — 6-626, 75-2304; Acts No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, 1989 (1st Ex. Sess.), No. 169, § 6; 1993, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, No. 383, § 1; 1997, No. 250, § 227; 2005, 5; 1985, No. 747, § 1; 1985, No. 1032, § 2; No. 2311, § 3. 1985, No. 1058, § 2; A.S.A. 1947, §§ 6-617

23-112-205. Disposition of funds.

(a) All funds received by the Arkansas Motor Vehicle Commission shall be deposited into the State Treasury as special revenues to the credit of a special fund to be known as the “Motor Vehicle Commission Fund”.

(b) All expenses incurred in the organization, maintenance, operation, and motor vehicle education and training of the commission shall be paid from the special fund, and the expenditure of all funds shall be subject to the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., the Arkansas Procurement Law, § 19-11-201 et seq., and other applicable fiscal laws.

(c) The receipts and disbursements of the commission shall be audited annually by the Legislative Auditor.

History. Acts 1975, No. 388, § 4; A.S.A. 1947, § 75-2304; Acts 2007, No. 530, § 6.

CASE NOTES

Cited: Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp., 374 F.3d 701 (8th Cir. 2004).

23-112-206. [Repealed.]

Publisher’s Notes. This section, concerning fund transfer, motor vehicle education and training, was repealed by Acts

2013, No. 561, § 3. The section was derived from Acts 2007, No. 530, § 5.

SUBCHAPTER 3 — LICENSING AND REGULATION

SECTION.

- 23-112-301. License required.
 23-112-302. Application for license.
 23-112-307. Expiration of license.
 23-112-308. Denial, revocation, and suspension.
 23-112-310. Delivery, preparation, and warranty obligations. [Effective until January 1, 2014.]
 23-112-310. Delivery, preparation, and warranty obligations. [Effective January 1, 2014.]
 23-112-311. Addition or relocation of new motor vehicle dealer.

SECTION.

- 23-112-312. License reciprocity with other states.
 23-112-313. Warranty agreements. [Effective until January 1, 2014.]
 23-112-313. Warranty agreements. [Effective January 1, 2014.]
 23-112-315. [Repealed.]
 23-112-316. Delivery prior to sale — Disclosures.
 23-112-317. Motor vehicle dealer service and handling fees.
 23-112-318. Negative equity financing and disclosures permitted.

Effective Dates. Acts 2007, No. 366, § 5: Mar. 19, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that currently a lawsuit is challenging the charging of documentary fees motor vehicle dealers as part of the sale of a motor vehicle; that the circuit court has found that the documentary fee which is a fee charged for the preparation of documents by the motor vehicle dealer is the unauthorized practice of law; and that this act is immediately necessary to prevent the ongoing problem and to prohibit motor vehicle dealers from charging documentary fees. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 756, § 25: Apr. 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that motor vehicle dealers are experiencing economic difficulties related to the state of the national economy and the motor vehicle industry in particular; that an unprecedented number of motor vehicle dealers may terminate their franchises as a result of these economic conditions; and that this act is immediately necessary to assist dealers that are facing possible termination of their franchise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-301. License required.

(a) Notwithstanding any other statute, the following acts are declared to be unlawful:

- (1) The violation of any of the provisions of this chapter; and
- (2) For any person to engage in business as, serve in the capacity of, or act as a new motor vehicle dealer, motor vehicle salesperson, motor

vehicle lessor, manufacturer, importer, distributor, factory branch or division, distributor branch or division, factory representative, distributor representative, second-stage manufacturer, or converter, as such, in Arkansas without first obtaining a license therefor as provided in this chapter, regardless of whether or not the person maintains or has a place of business in Arkansas.

(b) Any person, firm, association, corporation, or trust engaging, acting, or serving in more than one (1) of these capacities or having more than one (1) place where such a business is carried on or conducted shall be required to obtain and hold a separate and current license for each capacity and place of business.

(c)(1) However, any licensed motor vehicle dealer shall not be required to obtain a license as a motor vehicle lessor for any location licensed as a motor vehicle dealer.

(2) A motor vehicle lessor shall be required to obtain only one (1) motor vehicle lessor's license, regardless of the number of leasing locations he or she owns and operates but shall list each location on his or her application and pay a fee of fifty dollars (\$50.00) for each location.

(3) New lease locations opened after a license is issued shall be approved by the Arkansas Motor Vehicle Commission but shall not require a new license.

(4) A motor vehicle lessor shall sell or offer for sale motor vehicles only from an established place of business and only after application to, approval of, and licensure at each location by the commission.

(d)(1) No person may engage in the business of buying, selling, or exchanging motor vehicles, unless he or she:

(A) Holds a valid license issued by the commission for the makes of motor vehicles being bought, sold, or exchanged; or

(B) Is a bona fide employee or agent of the licensee.

(2) For purposes of this subsection, "engage in the business of buying, selling, or exchanging motor vehicles" means:

(A) Displaying for sale motor vehicles on a lot or showroom;

(B) Advertising for sale new motor vehicles regardless of the medium used; or

(C) Regularly or actively soliciting buyers for motor vehicles.

History. Acts 1975, No. 388, §§ 5, 8, 10; 1154, § 9; 1999, No. 1042, § 2; 2001, No. 1977, No. 838, § 2; 1985, No. 1032, §§ 3, 1053, § 2; 2009, No. 756, § 6.
6; 1985, No. 1058, §§ 3, 6; A.S.A. 1947, §§ 75-2305, 75-2308, 75-2310; Acts 1989, No. 678, § 1; 1995, No. 568, § 4; 1997, No.

Amendments. The 2009 amendment inserted "importer" in (a)(2), and made related and minor stylistic changes.

23-112-302. Application for license.

(a) Applications for licenses required to be obtained under the provisions of this chapter shall:

(1) Be verified by the oath or affirmation of the applicants;

(2) Be on forms prescribed by the Arkansas Motor Vehicle Commission and furnished to the applicants; and

(3) Contain such information as the commission deems necessary to enable it to fully determine the qualifications and eligibility of the several applicants to receive the licenses applied for.

(b) The commission shall require that there be set forth in each application:

(1) Information relating to:

(A) The applicant's business integrity;

(B) Whether the applicant has an established place of business in the State of Arkansas and is primarily engaged in the pursuit, avocation, or business for which licenses are applied for; and

(C) Whether the applicant has the proper facilities and is able to properly conduct the business for which licenses are applied for; and

(2) Other pertinent information consistent with the safeguarding of the public interest and public welfare.

(c)(1)(A) In addition to the provisions of subsections (a) and (b) of this section, applications for licenses as:

(i) New motor vehicle dealers must also be accompanied by the filing with the commission of a corporate surety bond in the penal sum of fifty thousand dollars (\$50,000) on a bond form approved by the commission; and

(ii) New motorcycle dealers, new all-terrain vehicle dealers, new low speed vehicle dealers, and motor vehicle lessors shall also be accompanied by the filing with the commission of a corporate surety bond in the penal sum of twenty-five thousand dollars (\$25,000) on a bond form approved by the commission.

(B) In each instance that a branch license is applied for, each application shall be accompanied by the filing with the commission of a corporate surety bond in the penal sum of twenty-five thousand dollars (\$25,000) on a bond form approved by the commission.

(C) Motor vehicle dealers shall also provide proof of liability insurance coverage on all vehicles to be offered for sale in an amount equal to or greater than the amount required by the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq.

(2) The bond shall be in effect upon the applicant's being licensed and shall be conditioned upon the applicant's complying with the provisions of this chapter.

(3) The bond shall be an indemnity for any loss sustained by any person by reason of the acts of the person bonded when those acts constitute grounds for the suspension or revocation of his or her license.

(4) The bond shall be executed in the name of the State of Arkansas for the benefit of any aggrieved party.

(5) The aggregate liability of the surety for all claimants, regardless of the number of years this bond is in force or has been in effect, shall not exceed the amount of the bond.

(6) The proceeds of the bond shall be paid upon receipt by the commission of a final judgment from an Arkansas court of competent jurisdiction against the principal and in favor of an aggrieved party.

(d)(1) In addition to the provisions of subsections (a)-(c) of this section, applications for licenses as motor vehicle dealers in new motor

vehicles must also be accompanied by the filing with the commission of a bona fide contract or franchise then in effect between the applicant and a manufacturer or distributor of the new motor vehicles proposed to be dealt in.

(2) However, if the contract or franchise has already been filed with the commission in connection with a previous application made by the applicant, the applicant, in lieu of again filing the contract or franchise, shall identify the contract or franchise by appropriate reference and file all revisions and additions, if any, which have been made to the contract or franchise.

(e) The applicant for a license as a new motor vehicle dealer shall furnish satisfactory evidence that the applicant:

(1) Maintains adequate space in the building or structure wherein the applicant's established business is conducted for the display of new motor vehicles or will have the facilities within a reasonable time after receiving a license;

(2) Has or will have adequate facilities in the building or structure to perform repair and service work on motor vehicles and adequate space for storage of new parts and accessories for the motor vehicles; and

(3) Will perform repair and warranty services on a motor vehicle at the licensed location.

(f)(1) Every licensed dealer shall maintain for three (3) years after the date of purchase records of each vehicle transaction to which the dealer was a party.

(2) Dealers shall maintain copies of all documents executed in connection with any transaction, which may include bills of sale, titles, odometer statements, invoices, affidavits of alteration, and reassignments, and shall be open to inspection by the Executive Director of the Arkansas Motor Vehicle Commission or a commission representative acting in an official capacity during reasonable business hours and upon execution of a subpoena.

(g)(1) The licensee applying for a branch license shall not utilize any portion of a franchise name or product nameplates.

(2) A licensee applying for a branch license shall remain in the relevant market area, as defined in the franchise or selling agreement approved by the franchiser and franchisee and on file in the commission office or as defined in this subchapter pertaining to relevant market area, whichever is greater.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1995, No. 568, § 5; 1999, No. 1042, § 3; 2001, No. 1053, § 3; 2009, No. 756, § 7; 2013, No. 561, § 4.

Amendments. The 2009 amendment

rewrote (e)(2), inserted (e)(3), and made related and minor stylistic changes.

The 2013 amendment, in (c)(1)(A)(ii), inserted "new low speed vehicle dealers," and substituted "shall" for "must."

23-112-305. Display of license — Change of employer — Factory representative and distributor representative.

A.C.R.C. Notes. Acts 2011, No. 298, § 3, provided: "CONSUMER PROTECTION. Protecting the consumer is a critical purpose of the Arkansas Motor Vehicle Commission. Therefore, of the total amount appropriated under Section 2 of this Act for the operating expenses of the Arkansas Motor Vehicle Commission, seventeen thousand five hundred dollars (\$17,500) each fiscal year shall be allocated to consumer protection efforts. The

Arkansas Motor Vehicle Commission will submit quarterly a written report to Arkansas Legislative Council on their Consumer Protection efforts.

"The Arkansas Motor Vehicle Commission will continue to develop additional programs and procedures that will expand consumer protection efforts.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

23-112-306. Display of license — Change of employer — Salesperson.

A.C.R.C. Notes. Acts 2011, No. 298, § 4, provided: "FUND TRANSFER — MOTOR VEHICLE EDUCATION AND TRAINING. For the fiscal year ending June 30, 2008, and for each fiscal year thereafter, the Director of the Arkansas Motor Vehicle Commission may, from time to time as needed, certify to the Chief Fiscal Officer of the State the amount of funds necessary to transfer on his or her books and those of the State Treasurer and the Auditor of State, from the Motor

Vehicle Commission Fund to the Department of Workforce Education Fund Account, to provide funds for expenses related to motor vehicle education and training. Fund transfer will be completed following quarterly review of program expenditures, including a review of the availability of program funding. In no event shall the amount of funds transferred under the provisions of this section exceed one hundred fifty thousand dollars (\$150,000) in any one fiscal year."

23-112-307. Expiration of license.

Unless the Arkansas Motor Vehicle Commission by rule provides to the contrary, all licenses issued to:

(1) Manufacturers, distributors, factory or distributor branches, importers, second-stage manufacturers, converters, and their representatives expire June 30 following the date of issue; and

(2) Motor vehicle dealers, motor vehicle salespersons, and motor vehicle lessors expire December 31 following the date of issue.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1987, No. 620, § 2; 1995, No. 568, § 10; 2001, No. 1053, § 8; 2009, No. 756, § 8.

Amendments. The 2009 amendment rewrote the section.

23-112-308. Denial, revocation, and suspension.

(a) Notwithstanding any other statute, the Arkansas Motor Vehicle Commission may deny an application for a license or revoke or suspend a license after it has been granted for any of the following reasons:

(1)(A) For selling or soliciting sales of a motor vehicle without a license issued by the commission.

- (B) The unlawful sale or solicitation of each motor vehicle shall constitute a separate offense;
- (2) On satisfactory proof of the unfitness of the applicant or the licensee, as the case may be, under the standards established and set out in this chapter;
- (3) For fraud practiced or any material misstatement made by an applicant in any application for license under the provisions of this chapter;
- (4) For failure to comply with any provision of this chapter or with any rule or regulation promulgated by the commission under authority vested in it by this chapter;
- (5) Change of condition after license is granted or failure to maintain the qualifications for license;
- (6) Continued violation of any of the provisions of this chapter or of any of the rules or regulations of the commission;
- (7) For any violation of any law relating to the sale, distribution, or financing of motor vehicles;
- (8) Defrauding any retail buyer to the buyer's damage;
- (9) Failure to perform any written agreement with any retail buyer;
- (10) Selling, attempting to sell, or advertising for sale vehicles from a location other than that set forth on the license;
- (11) Falsifying, altering, or neglecting to endorse or deliver a certificate of title to a transferee or lawful owner or failing to properly designate a transferee on a document of assignment or certificate of title;
- (12) Knowingly purchasing, selling, or otherwise acquiring or disposing of a stolen motor vehicle;
- (13) Submitting a false affidavit setting forth that a title has been lost or destroyed;
- (14) Passing title or reassigning title as a dealer without a dealer's license or when the dealer's license has been suspended or revoked;
- (15) For a person representing that he or she is a dealer or salesperson, either verbally or in any advertisement, when the person is not licensed as such;
- (16) Assisting any person in the sale of a motor vehicle who is not licensed as a dealer by the commission;
- (17) Being a manufacturer who fails to specify the delivery and preparation obligations of its motor vehicle dealers, as is required for the protection of the buying public, prior to delivery of new motor vehicles to retail buyers;
- (18)(A) On satisfactory proof that any manufacturer, distributor, distributor branch or division, or factory branch or division has unfairly and without due regard to the equities of the parties or to the detriment of the public welfare failed to properly fulfill any warranty agreement or to adequately and fairly compensate any of its motor vehicle dealers for labor, parts, or incidental expenses incurred by the dealer with regard to factory warranty agreements performed by the dealer.

(B) Compensation for parts for two-wheeled, three-wheeled, and four-wheeled motorcycles and motor-driven all-terrain vehicles must be at the manufacturer's suggested retail price;

(19) For the commission of any act prohibited by §§ 23-112-301 — 23-112-307, 23-112-402, and 23-112-403, or the failure to perform any of the requirements of those sections;

(20) Using or permitting the use of special license plates assigned to him or her for any other purpose than those permitted by law;

(21) Disconnecting, turning back, or resetting the odometer of any motor vehicle in violation of state or federal law;

(22) Accepting an open assignment of title or bill of sale for a motor vehicle which is not completed by identifying the licensee as the purchaser or assignee of the motor vehicle;

(23)(A) Failure to notify the commission of a change in ownership, location, or franchise, or any other matters the commission may require by regulation.

(B) The notification shall be in written form and submitted to the commission at least fifteen (15) days prior to the effective date of the change;

(24) Failure to endorse and deliver an assignment and warranty of title to the buyer pursuant to § 27-14-902;

(25) Using or permitting the use of a temporary cardboard buyer's tag assigned to the dealer for any purpose other than permitted under § 27-14-1705; and

(26) Failure of a dealer to submit or deliver a certificate of title or manufacturer's certificate of origin within a reasonable period of time.

(b) The revocation or suspension of the license of a manufacturer, factory branch or division, distributor, or distributor branch or division may be limited to:

(1) One (1) or more municipalities or counties;

(2)(A) The sales area of any dealer whose franchise is unfairly cancelled or terminated within the purview of this chapter or whose franchise is not renewed in violation of the provisions of this chapter.

(B) However, when a franchise is unfairly cancelled or terminated within the purview of this chapter or is not renewed in violation of the provisions of this chapter in a metropolitan area serviced by several motor vehicle dealers handling the same motor vehicles, the revocation or suspension shall not be applicable to the remaining motor vehicle dealers in the metropolitan area.

History. Acts 1975, No. 388, § 6; 1985, No. 1032, § 5; 1985, No. 1058, § 5; A.S.A. 1947, § 75-2306; Acts 1991, No. 411, § 1; 1993, No. 383, § 4; 2001, No. 1053, § 9; 2009, No. 756, § 9.

Amendments. The 2009 amendment inserted (a)(25) and (a)(26).

CASE NOTES

Cited: Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp., 374 F.3d 701 (8th Cir. 2004).

23-112-309. Monetary penalty in lieu of suspension or revocation of license.

CASE NOTES

Cited: Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp., 374 F.3d 701 (8th Cir. 2004).

23-112-310. Delivery, preparation, and warranty obligations. [Effective until January 1, 2014.]

(a)(1) Every licensed motor vehicle manufacturer, distributor, second-stage manufacturer, importer, or converter shall file with the Arkansas Motor Vehicle Commission with its initial application for a license:

(A) A copy of the documents stating the delivery, preparation, and warranty obligations of its motor vehicle dealers; and

(B) A schedule of the compensation to be paid to its motor vehicle dealers for the work and services they shall be required to perform in connection with the delivery, preparation, and warranty obligations.

(2) The documents shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer or distributor.

(3) Any revisions to the delivery, preparation, and warranty obligations or to the schedule of compensation shall be filed no later than September 15 of each calendar year.

(b) Any mechanical, body, or parts defects arising from any express or implied warranties of any manufacturer shall constitute the manufacturer's product or warranty liability.

(c) Notwithstanding the terms of a franchise agreement or provision of law in conflict with this subsection, the dealer's delivery, preparation, and warranty obligations as filed with the commission shall constitute the dealer's sole responsibility for product liability as between the dealer and the manufacturer or distributor, and, except for a loss caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer or distributor shall reimburse the dealer for all losses incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer's having been named a party in a product liability action.

(d)(1)(A) A manufacturer, distributor, distributor branch or division, or factory or division branch shall not pay to any of its motor vehicle dealers a labor rate per hour or parts price for warranty work that is

less than that charged by the dealer to its retail customers, provided the rate is reasonable compared to other same line-make dealers in the dealer's relevant market area or the dealer's competitive market area.

(B) Conversely, a dealer shall not charge to its manufacturer, distributor, distributor branch or division, or factory branch or division a labor rate per hour or parts price in excess of the rate charged to its retail customers.

(C) In the case of a motor home, a warrantor shall reimburse the dealer for warranty parts at the actual wholesale cost plus a minimum thirty percent (30%) handling charge and the cost, if any, of freight to return the warranty parts to the warrantor.

(D) A manufacturer, distributor, distributor branch or division, or factory branch or division of new motorcycles, motorized cycles, and all-terrain vehicles shall not pay to any new motor vehicle dealers of motorcycles, motorized cycles, and all-terrain vehicles a labor rate per hour or parts price for warranty work that is less than that charged by the new motor vehicle dealer to its retail customers, provided that the rate is reasonable compared to other same line make motor vehicle dealers in the new motor vehicle dealer's relevant market area or the new motor vehicle dealer's competitive market area.

(2)(A) All claims made by motor vehicle dealers for the labor, parts, or incidental expenses shall be paid within thirty (30) days following their approval.

(B) All claims shall be either approved or disapproved within thirty (30) days after their receipt, and when any claim is disapproved, the motor vehicle dealer who submits it shall be notified in writing of its disapproval within the period, and each notice shall state the specific grounds upon which the disapproval is based.

(3) In no event shall any manufacturer, distributor, distributor branch or division, or factory or division branch refuse to pay to any of its motor vehicle dealers for any warranty work, as long as the work in question was properly performed.

History. Acts 1975, No. 388, §§ 5, 6; 1985, No. 1032, §§ 3, 5; 1985, No. 1058, §§ 3, 5; A.S.A. 1947, §§ 75-2305, 75-2306; Acts 1991, No. 411, § 2; 1997, No. 1154, § 11; 1999, No. 1042, § 5; 2001, No. 1053, § 11; 2009, No. 756, § 10; 2011, No. 1005, § 7.

Publisher's Notes. For text of section effective January 1, 2014, see the following version.

Amendments. The 2009 amendment subdivided (d)(1), inserted "provided the rate is reasonable compared to other same line-make dealers in the dealer's relevant market area or the dealer's competitive market area" in (d)(1)(a), inserted "or parts price" in (d)(1)(A) and (d)(1)(B), inserted (d)(1)(C), and made minor stylistic changes.

The 2011 amendment added (d)(1)(D).

**23-112-310. Delivery, preparation, and warranty obligations.
[Effective January 1, 2014.]**

(a)(1) Every licensed motor vehicle manufacturer, distributor, second-stage manufacturer, importer, or converter shall file with the Arkansas Motor Vehicle Commission with its initial application for a license:

(A) A copy of the documents stating the delivery, preparation, and warranty obligations of its motor vehicle dealers; and

(B) A schedule of the compensation to be paid to its motor vehicle dealers for the work and services they shall be required to perform in connection with the delivery, preparation, and warranty obligations.

(2) The documents shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer or distributor.

(3) Any revisions to the delivery, preparation, and warranty obligations or to the schedule of compensation shall be filed no later than September 15 of each calendar year.

(b) Any mechanical, body, or parts defects arising from any express or implied warranties of any manufacturer shall constitute the manufacturer's product or warranty liability.

(c) Notwithstanding the terms of a franchise agreement or provision of law in conflict with this subsection, the dealer's delivery, preparation, and warranty obligations as filed with the commission shall constitute the dealer's sole responsibility for product liability as between the dealer and the manufacturer or distributor, and, except for a loss caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer or distributor shall reimburse the dealer for all losses incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer's having been named a party in a product liability action.

(d)(1)(A) A manufacturer, distributor, distributor branch or division, or factory or division branch shall not pay to any of its motor vehicle dealers a labor rate per hour or parts price for warranty work that is less than that charged by the dealer to its retail customers, provided the rate is reasonable compared to other same line-make dealers in the dealer's relevant market area or the dealer's competitive market area.

(B) Conversely, a dealer shall not charge to its manufacturer, distributor, distributor branch or division, or factory branch or division a labor rate per hour or parts price in excess of the rate charged to its retail customers.

(C) A manufacturer, distributor, distributor branch or division, or factory branch or division of new motorcycles, motorized cycles, and all-terrain vehicles shall not pay to any new motor vehicle dealers of motorcycles, motorized cycles, and all-terrain vehicles a labor rate per hour or parts price for warranty work that is less than that

charged by the new motor vehicle dealer to its retail customers, provided that the rate is reasonable compared to other same line make motor vehicle dealers in the new motor vehicle dealer's relevant market area or the new motor vehicle dealer's competitive market area.

(2)(A) All claims made by motor vehicle dealers for the labor, parts, or incidental expenses shall be paid within thirty (30) days following their approval.

(B) All claims shall be either approved or disapproved within thirty (30) days after their receipt, and when any claim is disapproved, the motor vehicle dealer who submits it shall be notified in writing of its disapproval within the period, and each notice shall state the specific grounds upon which the disapproval is based.

(3) In no event shall any manufacturer, distributor, distributor branch or division, or factory or division branch refuse to pay to any of its motor vehicle dealers for any warranty work, as long as the work in question was properly performed.

History. Acts 1975, No. 388, §§ 5, 6; 1985, No. 1032, §§ 3, 5; 1985, No. 1058, §§ 3, 5; A.S.A. 1947, §§ 75-2305, 75-2306; Acts 1991, No. 411, § 2; 1997, No. 1154, § 11; 1999, No. 1042, § 5; 2001, No. 1053, § 11; 2009, No. 756, § 10; 2011, No. 1005, § 7; 2013, No. 1043, § 4.

Publisher's Notes. For text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2009 amendment subdivided (d)(1), inserted "provided the rate is reasonable compared to other same

line-make dealers in the dealer's relevant market area or the dealer's competitive market area" in (d)(1)(a), inserted "or parts price" in (d)(1)(A) and (d)(1)(B), inserted (d)(1)(C), and made minor stylistic changes.

The 2011 amendment added (d)(1)(D).

The 2013 amendment deleted (d)(1)(C) which referred to motor homes and redesignated former (D) as (C).

Effective Dates. Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-311. Addition or relocation of new motor vehicle dealer.

(a)(1) In all instances, when a manufacturer or distributor seeks to enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer within or into a relevant market area where the same line make is then represented, the manufacturer or distributor shall in writing first notify the Arkansas Motor Vehicle Commission and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area.

(2)(A) Within twenty (20) days of receiving the notice or within twenty (20) days after the end of any appeal procedure provided by the manufacturer or distributor, any new motor vehicle dealer may file with the commission to protest the establishing or relocating of the new motor vehicle dealer.

(B) When a protest is filed, the commission shall inform the manufacturer or distributor that a timely protest has been filed and that the manufacturer or distributor shall not establish or relocate

the proposed new motor vehicle dealer until the commission has held a hearing, nor thereafter if the commission has determined that there is good cause for not permitting the addition or relocation of the new motor vehicle dealer.

(C) In the event that a protest is filed with the commission, the party desiring the addition or relocation of a new motor vehicle dealer pursuant to this subsection shall pay for and provide a copy of a survey showing the proposed location of the additional or relocated new motor vehicle dealer in relation to other existing dealers of the same line make in the relevant market area.

(b) This section does not apply:

(1) To the relocation of an existing new motor vehicle dealer, other than a new motor vehicle dealer of motorcycles, motorized cycles, and all-terrain vehicles, within that dealer's relevant market area, provided that the relocation not be at a site within ten (10) miles of a licensed new motor vehicle dealer for the same line make of motor vehicles;

(2) If the proposed new motor vehicle dealer, other than a new motor vehicle dealer of motorcycles, motorized cycles, and all-terrain vehicles, is to be established at or within two (2) miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle has ceased operating within the previous two (2) years; or

(3) To the relocation of an existing new motor vehicle dealer of motorcycles, motorized cycles, and all-terrain vehicles within that dealer's relevant market area, provided that the relocation not be at a site within twenty-five (25) miles of a licensed new motor vehicle dealer for the same line make of motor vehicles.

(c)(1) In determining whether good cause has been established for not entering into a franchise establishing or relocating an additional new motor vehicle dealer for the same line make, the commission shall take into consideration the existing circumstances, including without limitation:

(A) Permanency of the investment of both the existing and proposed new motor vehicle dealers;

(B) Growth or decline in population and new motor vehicle registrations in the relevant market area;

(C) Effect on the consuming public in the relevant market area;

(D) Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;

(E) Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the line make in the market area, which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel; and

(F) Whether the establishment of an additional new motor vehicle dealer would increase competition and, therefore, be in the public interest.

(2) In determining whether good cause has been established for not entering into a franchise establishing or relocating an additional new

motor vehicle dealer for the same line make, the burden of proof is on the manufacturer or distributor to show it has good cause for granting the new franchise, except when an existing franchisee initiated the relocation.

(d)(1) The commission shall conduct the hearing and render its final determination within one hundred eighty (180) days after a protest is filed.

(2) Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated new motor vehicle dealer, unless the delay is caused by acts of the manufacturer or distributor or the relocating or additional dealer.

(e) Any parties to a hearing by the commission concerning the establishing or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1997, No. 1154, § 12; 1999, No. 1042, § 6; 2001, No. 1053, § 12; 2009, No. 756, § 11; 2011, No. 1005, § 8.

Amendments. The 2009 amendment substituted “motor vehicle” for “car” in (c)(2), and made a minor stylistic change in the introductory language.

The 2011 amendment added the (c)(1) designation; redesignated former (c)(1) through (c)(6) as (c)(1)(A) through (c)(1)(F); added (c)(2); added the (d)(1) designation; substituted “one hundred eighty (180)” for “one hundred twenty (120)” in (d)(1); and added the (d)(2) designation.

23-112-312. License reciprocity with other states.

(a) The Arkansas Motor Vehicle Commission may enter into reciprocal agreements with motor vehicle commissions or their equivalents in other states to allow motor vehicle dealers who are licensed in those states to obtain a temporary permit in this state, pursuant to the rules promulgated by the Arkansas Motor Vehicle Commission.

(b) Any person who is licensed under the laws of another state or territory of the United States to engage in business as a motor vehicle dealer may apply for a temporary permit in this state upon production of satisfactory proof that:

(1) The requirements for licensing in the particular state or territory were equivalent to the requirements in effect in this state at the date of the applicant’s licensing;

(2) The applicant meets all the qualifications for the temporary permit and pays the fees specified for the permits pursuant to the rules of the Arkansas Motor Vehicle Commission; and

(3) The applicant meets other reasonable qualifications as may be adopted by the Arkansas Motor Vehicle Commission.

History. Acts 1997, No. 1154, § 1; 2007, No. 235, § 2.

23-112-313. Warranty agreements. [Effective until January 1, 2014.]

(a) Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division shall properly fulfill any warranty or recall agreement and adequately and fairly compensate each of its motor vehicle dealers for labor and parts.

(b) The compensation shall not fail to include reasonable compensation for diagnostic work, repair service, labor, and parts.

(c)(1) Time allowances for the diagnosis and performance of warranty or recall work and service shall be reasonable and adequate for the work to be performed.

(2) In the determination of what constitutes reasonable compensation for warranty or recall work and service under this subsection, the principal factor to be considered is the prevailing wage rates, exclusive of routine maintenance, that are being charged by the dealers in the relevant market area in which the motor vehicle dealer is doing business.

(3) The compensation of a motor vehicle dealer for warranty or recall service shall not be less than the rates charged by the dealer for like service to retail customers for nonwarranty service and repairs, provided the rate is reasonable compared to other same line make dealers in the dealer's relevant market area or the dealer's competitive market area.

(d)(1)(A) The pricing for a recalled part shall not be reduced to an amount that is less than the original dealer cost or price for the same part unless the manufacturer obtains a discounted rate for the recalled part from a supplier.

(B) A recalled part is considered the same part if it is substantially the same part regardless of the part number.

(2) A part-by-part analysis is not required to determine the retail rate for parts.

(3) The parts mark-up shall not be substituted for a handling allowance or similar pricing amount that results in the reduction of compensation for the dealer.

(e)(1) All claims under this section, either original or resubmitted, made by motor vehicle dealers for the labor and parts shall be either approved or disapproved within thirty (30) days following their approval or disapproval.

(2)(A)(i) The motor vehicle dealer who submits a claim which is disapproved shall be notified in writing of the disapproval within the same period, and the notice shall state the specific grounds upon which the disapproval is based.

(ii) The motor vehicle dealer may correct and resubmit the disapproved claims within thirty (30) days of receipt of disapproval.

(B) Any claims not specifically disapproved in writing within thirty (30) days from their submission shall be deemed approved, and payment shall follow within thirty (30) days.

(3)(A) A claim shall not be disapproved because a clerical error was made that does not render the amount of the claim incorrect, including without limitation clerical errors that occur as a result of a manufacturer or distributor's prior approval process, provided the dealer receives preapproval pursuant to the established practices of the manufacturer or distributor for these programs.

(B) However, a dealer may contest the disapproval through the manufacturer's appeals process.

(4)(A) The manufacturer or franchiser may:

(i) Require documentation for claims;

(ii) Audit the claims within a one-year period from the date the claim was paid or credit issued by the manufacturer or franchiser; and

(iii) Charge back any false or unsubstantiated claims.

(B) The audit and charge-back provisions of this subsection also apply to all other incentive and reimbursement programs for a period of twelve (12) months after the date of the transactions that are subject to audit by the franchiser.

(C) However, the manufacturer retains the right to charge back any fraudulent claim if the manufacturer establishes in a court of competent jurisdiction in this state that the claim is fraudulent within a period not to exceed two (2) years from the date of the claim in question.

(D)(i) A dealer may file an appeal with the Arkansas Motor Vehicle Commission to protest any chargeback under this subdivision (e)(4) within ninety (90) days of notification by the manufacturer or distributor.

(ii) If a dealer files an appeal of the chargeback with the commission, the manufacturer or distributor shall not levy the chargeback until the appeal is resolved. The commission shall hold a hearing on the matter no later than one hundred twenty (120) days from the time the appeal is filed unless all parties have otherwise agreed to settle the matter.

(iii) An appeal by the licensee under this subdivision (e)(4)(D) shall be in accordance with § 23-112-501 et seq.

(f) This section does not apply to compensation for parts of a motor home other than parts of a motorized chassis, engine, and power train.

History. Acts 1997, No. 1154, § 2; 1999, No. 1042, § 7; 2007, No. 746, §§ 1, 2; 2009, No. 756, § 12; 2011, No. 1005, § 9.

Publisher's Notes. For text of section effective January 1, 2014, see the following version.

Amendments. The 2009 amendment redesignated the section; inserted present (d)(1), (d)(3), and (e)(3)(B); inserted "and parts" in (b); inserted "provided the rate is

reasonable compared to other same line-make dealers in the dealer's relevant market area or the dealer's competitive market area" in (c)(3); substituted "section" for "subsection" in (e)(1) and substituted "ninety (90) days" for "thirty (30) days" in (e)(4)(D)(i); and made related and minor stylistic changes throughout the section.

The 2011 amendment inserted "including without limitation ... distributor for these programs" in (e)(3)(A).

23-112-313. Warranty agreements. [Effective January 1, 2014.]

(a) Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division shall properly fulfill any warranty or recall agreement and adequately and fairly compensate each of its motor vehicle dealers for labor and parts.

(b) The compensation shall not fail to include reasonable compensation for diagnostic work, repair service, labor, and parts.

(c)(1) Time allowances for the diagnosis and performance of warranty or recall work and service shall be reasonable and adequate for the work to be performed.

(2) In the determination of what constitutes reasonable compensation for warranty or recall work and service under this subsection, the principal factor to be considered is the prevailing wage rates, exclusive of routine maintenance, that are being charged by the dealers in the relevant market area in which the motor vehicle dealer is doing business.

(3) The compensation of a motor vehicle dealer for warranty or recall service shall not be less than the rates charged by the dealer for like service to retail customers for nonwarranty service and repairs, provided the rate is reasonable compared to other same line make dealers in the dealer's relevant market area or the dealer's competitive market area.

(d)(1)(A) The pricing for a recalled part shall not be reduced to an amount that is less than the original dealer cost or price for the same part unless the manufacturer obtains a discounted rate for the recalled part from a supplier.

(B) A recalled part is considered the same part if it is substantially the same part regardless of the part number.

(2) A part-by-part analysis is not required to determine the retail rate for parts.

(3) The parts mark-up shall not be substituted for a handling allowance or similar pricing amount that results in the reduction of compensation for the dealer.

(e)(1) All claims under this section, either original or resubmitted, made by motor vehicle dealers for the labor and parts shall be either approved or disapproved within thirty (30) days following their approval or disapproval.

(2)(A)(i) The motor vehicle dealer who submits a claim which is disapproved shall be notified in writing of the disapproval within the same period, and the notice shall state the specific grounds upon which the disapproval is based.

(ii) The motor vehicle dealer may correct and resubmit the disapproved claims within thirty (30) days of receipt of disapproval.

(B) Any claims not specifically disapproved in writing within thirty (30) days from their submission shall be deemed approved, and payment shall follow within thirty (30) days.

(3)(A) A claim shall not be disapproved because a clerical error was made that does not render the amount of the claim incorrect, including without limitation clerical errors that occur as a result of a manufacturer or distributor's prior approval process, provided the dealer receives preapproval pursuant to the established practices of the manufacturer or distributor for these programs.

(B) However, a dealer may contest the disapproval through the manufacturer's appeals process.

(4)(A) The manufacturer or franchiser may:

(i) Require documentation for claims;

(ii) Audit the claims within a one-year period from the date the claim was paid or credit issued by the manufacturer or franchiser; and

(iii) Charge back any false or unsubstantiated claims.

(B) The audit and charge-back provisions of this subsection also apply to all other incentive and reimbursement programs for a period of twelve (12) months after the date of the transactions that are subject to audit by the franchiser.

(C) However, the manufacturer retains the right to charge back any fraudulent claim if the manufacturer establishes in a court of competent jurisdiction in this state that the claim is fraudulent within a period not to exceed two (2) years from the date of the claim in question.

(D)(i) A dealer may file an appeal with the Arkansas Motor Vehicle Commission to protest any chargeback under this subdivision (e)(4) within ninety (90) days of notification by the manufacturer or distributor.

(ii) If a dealer files an appeal of the chargeback with the commission, the manufacturer or distributor shall not levy the chargeback until the appeal is resolved. The commission shall hold a hearing on the matter no later than one hundred twenty (120) days from the time the appeal is filed unless all parties have otherwise agreed to settle the matter.

(iii) An appeal by the licensee under this subdivision (e)(4)(D) shall be in accordance with § 23-112-501 et seq.

(f) [Repealed.]

History. Acts 1997, No. 1154, § 2; 1999, No. 1042, § 7; 2007, No. 746, §§ 1, 2; 2009, No. 756, § 12; 2011, No. 1005, § 9; 2013, No. 1043, § 5.

Publisher's Notes. For text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2009 amendment redesignated the section; inserted present (d)(1), (d)(3), and (e)(3)(B); inserted "and parts" in (b); inserted "provided the rate is reasonable compared to other same line-make dealers in the dealer's relevant mar-

ket area or the dealer's competitive market area" in (c)(3); substituted "section" for "subsection" in (e)(1) and substituted "ninety (90) days" for "thirty (30) days" in (e)(4)(D)(i); and made related and minor stylistic changes throughout the section.

The 2011 amendment inserted "including without limitation ... distributor for these programs" in (e)(3)(A).

The 2013 amendment deleted (f).

Effective Dates. Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-315. [Repealed.]

Publisher's Notes. This section, concerning motor vehicle dealer documentary fees; disclosures, was repealed by Acts 2007, No. 366, § 3. The section was derived from Acts 2001, No. 1600, §1; 2003, No. 1722, §1.

23-112-316. Delivery prior to sale — Disclosures.

(a) As used in this section:

(1)(A) "Contract for sale" means the final agreement between a new motor vehicle dealer and a consumer that:

(i) Includes all material terms of the sale of a motor vehicle; and

(ii) Is binding upon the seller, the buyer, and any necessary third-party financier.

(B) "Contract for sale" includes a financing agreement and all material financing terms if the motor vehicle is to be financed; and

(2) "Delivery prior to sale" means a delivery of a motor vehicle by a new motor vehicle dealer to a consumer prior to the completion and execution by both parties of a contract for sale.

(b) If a new motor vehicle dealer engages in a delivery prior to sale, then the new motor vehicle dealer shall provide the consumer with an agreement for delivery prior to sale at the time of delivery of the motor vehicle to the consumer.

(c)(1) The agreement for delivery prior to sale shall be:

(A) Printed in at least 12-point type; and

(B) Signed by the consumer and the new motor vehicle dealer or the dealer's representative.

(2) The agreement for delivery prior to sale shall not be considered a contract for sale.

(d) The agreement for delivery prior to sale shall include all of the following terms:

(1) Unless the consumer is approved for financing and both parties have executed a contract for sale, then the new motor vehicle dealer shall not:

(A) Deposit or cash any down payment provided by the consumer; and

(B) Sell any motor vehicle that is presented by the consumer as a trade-in;

(2) The consumer retains the right to cancel the purchase of a motor vehicle if:

(A) The new motor vehicle dealer changes any terms; or

(B) The consumer fails to obtain financing that meets the agreed-upon interest rate;

(3) If a consumer who executes an agreement for delivery prior to sale chooses not to execute a contract for sale or otherwise cancels the purchase as provided under this section, then:

(A) The new motor vehicle dealer shall not:

(i) Impose any charge or penalty against the consumer; or

(ii) Deposit or cash any down payment provided by the consumer; and

(B) The new motor vehicle dealer shall immediately return any motor vehicle that was presented by the consumer as a trade-in; and

(4) If the consumer decides not to purchase the motor vehicle, the consumer shall return the motor vehicle to the new motor vehicle dealer within forty-eight (48) hours after the consumer notifies the dealer.

(e) If a consumer fails to return a motor vehicle pursuant to subdivision (d)(4) of this section, then the new motor vehicle dealer may recover the vehicle without the necessity of judicial process if the recovery is possible without committing an act of breaking or entering or breach of the peace.

(f) The Arkansas Motor Vehicle Commission shall promulgate rules and regulations to implement, enforce, and administer this section.

History. Acts 2005, No. 1687, § 1.

23-112-317. Motor vehicle dealer service and handling fees.

(a) A motor vehicle dealer may fill in the blanks on standardized forms in connection with the sale or lease of a new or a used motor vehicle if the motor vehicle dealer does not charge for the service of filling in the blanks or otherwise charge for preparing documents.

(b)(1) A motor vehicle dealer may charge a service and handling fee in connection with the sale or lease of a new or a used motor vehicle for:

(A) The handling, processing, and storage of documents; and

(B) Other administrative and clerical services.

(2)(A) The service and handling fee may be charged to allow cost recovery for motor vehicle dealers.

(B) A portion of the service and handling fee may result in profit to the motor vehicle dealer.

(c)(1) The Arkansas Motor Vehicle Commission shall determine by rule the amount of the service and handling fee that may be charged by a motor vehicle dealer. The service and handling fee shall be no less than zero dollars (\$0.00) and no more than one hundred twenty-nine dollars (\$129).

(2) If a service and handling fee is charged under this section, the service and handling fee shall be:

(A) Charged to all retail customers; and

(B) Disclosed on the retail buyer's order form as a separate itemized charge.

(3) If a service and handling fee is charged under this section, the service and handling fee is not required to be charged to all fleet sales.

(d) A preliminary worksheet on which a sale price is computed and that is shown to the purchaser, a retail buyer's order form from the purchaser, or a retail installment contract shall include in reasonable proximity to the place on the document where the service and handling fee authorized by this section is disclosed:

(1) The amount of the service and handling fee; and

(2) The following notice in type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material:

“A SERVICE AND HANDLING FEE IS NOT AN OFFICIAL FEE. A SERVICE AND HANDLING FEE IS NOT REQUIRED BY LAW BUT MAY BE CHARGED TO THE CUSTOMER FOR PERFORMING SERVICES AND HANDLING DOCUMENTS RELATING TO THE CLOSING OF A SALE OR LEASE. THE SERVICE AND HANDLING FEE MAY RESULT IN PROFIT TO THE DEALER. THE SERVICE AND HANDLING FEE DOES NOT INCLUDE PAYMENT FOR THE PREPARATION OF LEGAL DOCUMENTS. THIS NOTICE IS REQUIRED BY LAW.”

(e) The Arkansas Motor Vehicle Commission may promulgate rules to implement, enforce, and administer this section.

History. Acts 2007, No. 366, § 1; 2013, No. 561, § 5. **Amendments.** The 2013 amendment added (c)(3).

23-112-318. Negative equity financing and disclosures permitted.

A new or used motor vehicle dealer or a new or used motor vehicle lessor is not required to be licensed by the State Bank Department in order to:

(1)(A) Pay in connection with a credit sale transaction, any amount necessary to satisfy a lease, a security interest, or a lien upon a motor vehicle that is either returned or traded in to the new or used motor vehicle dealer or the new or used motor vehicle lessor by the purchaser of a new or used motor vehicle.

(B) The amount paid by the new or used motor vehicle dealer or by the new or used motor vehicle lessor may be included and disclosed as part of the credit sale transaction; or

(2)(A) Pay in connection with a lease transaction, any amount necessary to satisfy a lease, a security interest, or a lien upon a motor vehicle that is either returned or traded in to the new or used motor vehicle dealer or the new or used motor vehicle lessor by the lessee of a new or used motor vehicle.

(B) The amount paid by the new or used motor vehicle dealer or by the new or used motor vehicle lessor may be included and disclosed as part of the amount to be paid by the lessee under the lease transaction.

History. Acts 2007, No. 649, § 1.

SUBCHAPTER 4 — UNLAWFUL PRACTICES

SECTION.

23-112-403. Manufacturers, distributors, second-stage manufacturers, importers, or converters. [Effective until January 1, 2014.]

23-112-403. Manufacturers, distributors,

SECTION.

second-stage manufacturers, importers, or converters. [Effective January 1, 2014.]

23-112-404. Motor vehicle lessors.

23-112-406. Acting as broker.

Effective Dates. Acts 2009, No. 756, § 25: Apr. 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that motor vehicle dealers are experiencing economic difficulties related to the state of the national economy and the motor vehicle industry in particular; that an unprecedented number of motor vehicle dealers may terminate their franchises as a result of these economic conditions; and that this act is immediately necessary to assist dealers that are facing possible termination of

their franchise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-403. Manufacturers, distributors, second-stage manufacturers, importers, or converters. [Effective until January 1, 2014.]

(a) It shall be unlawful:

(1) For a manufacturer, distributor, second-stage manufacturer, importer, converter, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof, to coerce or attempt to coerce any motor vehicle dealer:

(A) To order or accept delivery of any motor vehicles, appliances, equipment, parts, or accessories therefor or any other commodities which shall not have been voluntarily ordered by the motor vehicle dealer;

(B) To order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of the motor vehicle as publicly advertised by the manufacturer thereof;

(C) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever;

(D) To contribute or pay money or anything of value into any cooperative or other advertising program or fund; or

(E) To file for or to use a legal or "d/b/a" name or identification other than a name of choice by the dealer;

(2) For a manufacturer, distributor, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof:

(A)(i) To refuse to deliver, in reasonable quantities and within a reasonable time after receipt of a dealer's order to any licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by the manufacturer, distributor, distributor branch or division, or factory branch or division, any motor vehicles that are covered by the franchise or contract specifically publicly advertised by the manufacturer, distributor, distributor branch or division, or factory branch or division to be available for immediate delivery.

(ii) However, the failure to deliver any motor vehicle shall not be considered a violation of this chapter if the failure is due to forces of nature, work stoppages or delays due to strikes or labor difficulties, freight, embargoes, or other causes over which the manufacturer or distributor, or any agent thereof, has no control;

(B)(i) To engage in any of the following:

(a) To coerce or attempt to coerce any motor vehicle dealer to enter into any agreement with the manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof; or

(b) To do any other act prejudicial to the motor vehicle dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor, distributor branch or division, or factory branch or division and the motor vehicle dealer.

(ii) However, good faith notice to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of this chapter;

(C)(i)(a) To terminate or cancel the franchise or selling agreement of any dealer without due cause.

(b) The nonrenewal of a franchise or selling agreement without due cause shall constitute an unfair termination or cancellation, regardless of the terms or provisions of the franchise or selling agreement.

(c) As used in this subchapter, tests for determining what constitutes due cause for a manufacturer or distributor to terminate a franchise or sales and service agreement include whether the motor vehicle dealer:

(1) Has transferred a majority ownership interest in the dealership without the manufacturer's or distributor's consent;

(2) Has made a material misrepresentation or committed a fraudulent act, or both, in applying for or in acting under the franchise agreement;

(3) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against him or her that has not been discharged within sixty (60) days after the filing, is in default under a security agreement in effect with the manufacturer or distributor, or is in receivership;

(4) Has engaged in unfair business or trade practices;

(5) Has failed to fulfill the warranty obligations of the manufac-

turer or distributor required to be performed by the motor vehicle dealer;

(6) Has inadequate motor vehicle sales and service facilities, equipment, vehicle parts, and unqualified service personnel to provide for the needs of the consumers for the motor vehicles handled by the franchisee and is rendering inadequate service to the public;

(7) Has failed to comply with an applicable federal, state, or local licensing law;

(8) Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, or dealership;

(9) Has failed to operate in the normal course of business for ten (10) consecutive business days or has terminated his or her business;

(10) Has relocated his or her place of business without the manufacturer's or distributor's consent; or

(11) Has failed to comply with the terms of the franchise, the reasonableness and fairness of the franchise terms, and the extent and materiality of the franchisee's failure to comply.

(d) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division shall have the burden of proving whether there is due cause to terminate a franchise or sales and service agreement.

(ii)(a) The manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof shall notify a motor vehicle dealer in writing and forward a copy of the notice to the Arkansas Motor Vehicle Commission of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty (60) days before the effective date thereof, stating the specific grounds for the termination or cancellation.

(b) However, in the event that the commission finds that the franchise or selling agreement has been abandoned by the dealer, the commission, for good cause, may waive the sixty-day notice requirement and allow for the immediate termination of the franchise or selling agreement.

(iii)(a) The manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof shall notify a motor vehicle dealer in writing and forward a copy of the notice to the commission at least sixty (60) days before the contractual term of its franchise or selling agreement expires that the franchise or selling agreement will not be renewed, stating the specific grounds for the nonrenewal in those cases in which there is no intention to renew it.

(b) In no event shall the contractual term of any franchise or selling agreement expire without the written consent of the motor vehicle dealer involved prior to the expiration of at least sixty (60) days following the written notice.

(iv)(a) A motor vehicle dealer who receives written notice that its franchise or selling agreement is being terminated or cancelled or

who receives written notice that its franchise or selling agreement will not be renewed may file with the commission within the sixty-day notice period a verified complaint for the commission's determination as to whether the termination or cancellation or nonrenewal is unfair under this chapter.

(b) That franchise or selling agreement shall continue in effect until final determination of the issues raised in the complaint as allowed under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., notwithstanding anything to the contrary contained in this chapter or in the franchise or selling agreement.

(c) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division shall have the burden of proving whether there is due cause to terminate a franchise or sales and service agreement.

(v)(a) If the franchise agreement, sales and service agreement, or bona fide contract is terminated or cancelled, the terminating or canceling party shall notify the commission of the termination or cancellation of the franchise or selling agreement at least sixty (60) days before the effective date.

(b) For motor vehicles other than motor homes, this subdivision (a)(2)(C)(v) applies to both voluntary and involuntary termination or cancellation of the franchise or selling agreement.

(c)(1) For motor homes, this subdivision (a)(2)(C)(v) applies to both the voluntary dealer-initiated termination or cancellation of all motor home franchise or selling agreements and the involuntary manufacturer-initiated termination or cancellation of any one (1) or more motor home franchise or selling agreements.

(2) This subdivision only applies to the voluntary dealer initiated termination of one (1) of two (2) or more line makes of motor homes if the dealer can show due cause to terminate or cancel the motor home franchise or selling agreement;

(D) To resort to or use any false or misleading advertisement in connection with its business as a manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof;

(E)(i) To offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price charged to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or programs, which results in a lesser actual price.

(ii) However, the provisions of this subdivision (a)(2)(E) shall not apply:

(a) To sales to a motor vehicle dealer for resale to any unit of federal, state, or local government;

(b) To sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated, or used by the dealer in a driver education program; or

(c) So long as a manufacturer or distributor, or any agent thereof, offers to piggyback bid allowances to all motor vehicle dealers of the same line make at the same allowance for sales to a local government in that dealer's relevant market area.

(iii) Nothing contained in this subdivision (a)(2)(E) shall be construed to prevent the utilization of sales promotion plans or programs or the offering of volume discounts through new motor vehicle dealers, for fleet or volume purchasers, if the program is available to all new motor vehicle dealers from the same manufacturer in this state;

(F) To offer to sell or to sell any new motor vehicle to any person, except a wholesaler or distributor, at a lower actual price than the actual price offered and charged to a motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device which results in a lesser actual price;

(G)(i) To offer to sell or to sell parts and accessories to any new motor vehicle dealer for use in his or her own business for the purpose of repairing or replacing the parts and accessories, or comparable parts and accessories, at a lower actual price than the actual price charged to any other new motor vehicle dealer for similar parts and accessories for use in its own business.

(ii) However, it is recognized that certain motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets. Therefore, nothing contained in this subdivision (a)(2)(G) shall be construed to prevent a manufacturer or distributor, or any agent thereof, from selling to a motor vehicle dealer who operates and serves as a wholesaler of parts and accessories such parts and accessories as may be ordered by the motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories;

(H)(i) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of its dealership or the means by or through which it finances the operation of the dealership, provided that:

(a) The dealer at all times meets any capital standards agreed to between the dealership and the manufacturer or distributor; and

(b) The standards are deemed reasonable by the commission.

(ii) If the dealer of record requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond in writing, giving or withholding consent, within sixty (60) days of receipt of the written request, consent is deemed to be given;

(I)(i) Notwithstanding the terms of any franchise agreement, to fail to give effect or to attempt to prevent any sale or transfer of a dealer, dealership, or franchise or interest therein, or management thereof, provided that the manufacturer or distributor has received sixty (60) days' written notice prior to the transfer or sale, and unless:

(a) The transferee does not meet the criteria generally applied by the manufacturer in approving new motor vehicle dealers or agree to be bound by all the terms and conditions of the dealer agreement, and the manufacturer so advises its dealer within sixty (60) days of receipt of the notice; or

(b) It is shown to the commission after a hearing that the result of such a sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

(ii) If the franchisee of record requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond by giving or withholding consent in writing within sixty (60) days of receipt of the written request consent is deemed to be given;

(J)(i) Notwithstanding the terms of any franchise agreement, to prevent, attempt to prevent, or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution applicable to the decedent's estate, provided that the manufacturer or distributor has received sixty (60) days' written notice prior to the transfer or sale, and unless:

(a) The transferee does not meet the criteria generally applied by the manufacturer in approving new motor vehicle dealers or agree to be bound by all the terms and conditions of the dealer agreement, and the manufacturer so advises its dealer within thirty (30) days of receipt of the notice; or

(b) It is shown to the commission, after notice and hearing, that the result of such a succession will be detrimental to the public interest or to the representation of the manufacturer or distributor.

(ii) However, nothing in this subdivision (a)(2)(J) shall prevent a dealer, during his or her lifetime, from designating any person as his or her successor dealer by written instrument filed with the manufacturer or distributor.

(iii) If the dealer's successor, heir, or devisee requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond by giving or withholding consent in writing, within thirty (30) days of receipt of the written request, consent is deemed to be given;

(K)(i) Notwithstanding the terms of any franchise agreement, to fail to pay to a dealer or any lienholder in accordance with their respective interests after the termination of franchise:

(a) The dealer cost plus any charges by the manufacturer, distributor, or a representative for distribution, delivery, and taxes, less all allowances paid to the dealer by the manufacturer, distributor, or representative for new, unsold, undamaged, and complete motor vehicles of current model year and one (1) year prior model year in the dealer's inventory;

(b) The dealer cost of each new, unused, undamaged, and unsold part or accessory if the part or accessory:

(1) Was purchased from the manufacturer by the dealer and is in the original package;

(2) Is identical to a part or accessory in the current parts catalogue except for the number assigned to the part or accessory; or

(3) Was purchased in the ordinary course of business by the dealer from another authorized dealer so long as the authorized dealer purchased the part or accessory directly from the manufacturer or distributor or from an outgoing authorized dealer as part of the dealer's initial inventory;

(c) The fair market value of each undamaged sign owned by the dealer which bears a trademark or trade name used or claimed by the manufacturer, distributor, or representative, if the sign was purchased from or purchased at the request of the manufacturer, distributor, or representative;

(d) The fair market value of all special tools and automotive service equipment owned by the dealer that were recommended in writing and designated as special tools and equipment and purchased from or purchased at the request of the manufacturer, distributor, or representative, if the tools and equipment are in usable and good condition except for reasonable wear and tear;

(e) The cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, tools, and equipment subject to repurchase;

(f) The balance of all claims for warranty and recall service and all other money owed by the manufacturer to the dealer;

(g)(1) Except as provided under subdivisions (a)(2)(K)(i)(g)(2) and (3) of this section, the fair market value of the franchise that is at least equivalent to the fair market value of the franchise one (1) day before the manufacturer announces the action that results in the termination or discontinuance of a line make.

(2) If the termination, cancellation, discontinuance, or nonrenewal is due to a manufacturer's change in distributors or manufacturer, the manufacturer may avoid paying fair market value to the new motor vehicle dealer if the distributor, manufacturer, new distributor, or new manufacturer offers the new motor vehicle dealer a franchise agreement with terms substantially similar to terms offered to other same line make new motor vehicle dealers.

(3) Subdivisions (a)(2)(K)(i)(g)(1) and (2) of this section do not apply to motor vehicle dealers, manufacturers, or distributors of motor homes;

(h)(1) Compensation for the actual pecuniary loss caused by the franchise termination, cancellation, or nonrenewal unless for due cause.

(2) In determining the actual pecuniary loss, the value of any continued service or parts business available to the dealer for the line make covered by the franchise shall be considered. If the dealer and

the manufacturer, importer, or distributor cannot agree on the amount of compensation to be paid under this subchapter, either party may file an action in a court of competent jurisdiction; or

(i) Any sums due as provided by subdivision (a)(2)(K)(i)(a) of this section within sixty (60) days after termination of a franchise and any sums due as provided by subdivisions (a)(2)(K)(i)(b)-(g) of this section within ninety (90) days after termination of a franchise. As a condition of payment, the dealer shall comply with reasonable requirements with respect to the return of inventory as are set out in the terms of the franchise agreement. A manufacturer, distributor, or representative who fails to pay those sums within the prescribed time or at such time as the dealer and lienholder, if any, proffer good title before the prescribed time for payment, is liable to the dealer for:

(1) The greatest of dealer cost, fair market value, or current price of the inventory;

(2) Interest on the amount due calculated at the rate applicable to a judgment of a court; and

(3) Reasonable attorney's fees and costs.

(ii) Obligations under this subdivision (a)(2)(K) do not apply if the termination is a result of the conviction of the franchisee in a court of competent jurisdiction of an offense that is punishable by a term of imprisonment in excess of one (1) year and the offense is substantially related to the business conducted pursuant to the franchise;

(L)(i) To fail or refuse to offer its same line make franchised dealers all models manufactured for that line make.

(ii) No additional requirements over the requirements originally required to initially obtain a dealership may be required of existing franchised dealers to receive any model by that line make;

(M)(i) To offer to sell or to sell any motor vehicle to a consumer, except through a licensed new motor vehicle dealer holding a franchise, a sales and service agreement, or a bona fide contract for the line make covering the new motor vehicle or as may otherwise be provided in subdivision (a)(3) of this section.

(ii) This subdivision (a)(2)(M) does not apply to manufacturer sales of new motor vehicles to the federal government, charitable organizations, or employees of the manufacturer;

(N) To prohibit or require a dealer to enter into a franchise or sales agreement with third parties, regardless of the location of the dealership or proposed dealership;

(O)(i) To require, coerce, or attempt to coerce any franchisee in this state to refrain from or to terminate, cancel, or refuse to continue any franchise based upon participation by the franchisee in the management of, investment in, or the acquisition of a franchise for the sale of any other line of new motor vehicle or related products in the same or separate facilities as those of the franchiser.

(ii) This subdivision (a)(2)(O) does not apply unless:

(a) The franchisee maintains a reasonable line of credit for each make or line of new motor vehicle;

(b) The franchisee remains in compliance with the franchise and any reasonable facilities requirement of the franchiser; and

(c) No change is made in the principal management of the franchisee.

(iii) The reasonable facilities requirement shall not include any requirement that the franchisee establish or maintain exclusive facilities, personnel, or display space when such requirements would not otherwise be justified by reasonable business considerations.

(iv)(a) Before the addition of a line make to the dealership facilities, the franchisee must first request consent of the franchiser, if required by the franchise agreement.

(b) Any decision of the franchiser with regard to dualing of two (2) or more franchises shall be granted or denied within sixty (60) days after a written request from the new motor vehicle dealer. The franchiser's failure to respond timely to a dualing request shall be deemed to be approval of the franchisee's request;

(P)(i) To fail to continue in full force and operation a motor vehicle dealer franchise agreement, notwithstanding a change, in whole or in part, of an established plan or system of distribution or ownership of the manufacturer of the motor vehicles offered for sale under the franchise agreement.

(ii) The appointment of a new importer or distributor for motor vehicles offered for sale under a franchise agreement described in subdivision (a)(2)(P)(i) of this section shall be deemed to be a change of an established plan or system of distribution;

(Q)(i)(a) Unless the manufacturer's, distributor's, second-stage manufacturer's, importer's, converter's, manufacturer's branch or division, or distributor's branch or division requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and the motor vehicle dealer's market and notwithstanding the terms of a franchise agreement or sales and service agreement, to require, coerce, or attempt to coerce any new motor vehicle dealer by program, policy, standard, or otherwise to:

(1) Change location of the dealership;

(2) Make any substantial changes, alterations, or remodeling to a motor vehicle dealer's sales or service facilities; or

(3) Replace a motor vehicle dealer's sales or service facilities.

(b) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division shall have the burden of proving that changes, alterations, remodeling, or replacement to a motor vehicle dealer's sales or service facilities are reasonable and justifiable under this subchapter.

(ii)(a) However, a manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division, consistent with its allocation obligations at law and to its other same line make motor vehicle dealers,

may provide to a motor vehicle dealer a commitment to supply additional vehicles or provide a loan or grant of money as an inducement for the motor vehicle dealer to expand, improve, remodel, alter, or renovate its facilities if the provisions of the commitment are contained in a writing voluntarily agreed to by the dealer and are made available, on substantially similar terms, to any of the licensee's other same line make dealers who voluntarily agree to make a substantially similar facility expansion, improvement, remodeling, alteration, or renovation.

(b) Subdivisions (a)(2)(Q)(i) and (ii)(a) of this section do not require a manufacturer, distributor, second-stage manufacturer, importer, convertor, manufacturer branch or division, or distributor branch or division to provide financial support for or contribution to the purchase sale of the assets of or equity in a motor vehicle dealer or a relocation of a motor vehicle dealer because such support has been provided to other purchases, sales, or relocations.

(c) A manufacturer, distributor, second-stage manufacturer, importer, convertor, manufacturer branch or division, or distributor branch or division shall not take or threaten to take any action that is unfair or adverse to a dealer who does not enter into an agreement pursuant to subdivisions (a)(2)(Q)(i) and (ii)(a) of this section.

(d) This subdivision does not affect any contract between a licensee and any of its dealers regarding relocation, expansion, improvement, remodeling, renovation, or alteration which exists on July 27, 2011.

(iii) Subdivisions (a)(2)(Q)(i) and (ii) of this section do not apply to motor vehicle dealers, manufacturers, or distributors of motor homes;

(R)(i) To unreasonably withhold approval for a new motor vehicle dealer to purchase substantially similar goods and services related to facility changes, alterations, or remodels from vendors the dealer chooses.

(ii) Subdivision (a)(2)(R)(i) of this section does not apply to motor vehicle dealers, manufacturers, or distributors of motor homes;

(S)(i) To require as a prerequisite to receiving a model or a series of vehicles a dealer to:

(a) Pay an extra fee or remodel, renovate, or recondition the dealer's existing facilities unless justified by the technological requirements for the sale or service of a vehicle;

(b) Purchase unreasonable advertising displays, training, tools, or other materials;

(c) Establish exclusive facilities; or

(d) Establish dedicated personnel.

(ii) Subdivision (a)(2)(S)(i) of this section does not apply to motor vehicle dealers, manufacturers, or distributors of motor homes;

(T)(i)(a) To use any written instrument, agreement, or waiver, to attempt to nullify or modify any provision of this chapter or prevent a new motor vehicle dealer from bringing an action in a particular forum otherwise available under law.

(b) An instrument contrary to this subdivision (a)(2)(T)(i) is void.

(c) However, this subdivision shall not apply to:

(1) Voluntary agreements in which separate and valuable consideration has been offered and accepted; or

(2) Settlement agreements entered into as a result of a dispute.

(ii)(a) Except as provided in subdivision (a)(2)(Q)(ii)(b) of this section, a manufacturer, distributor, or factory branch shall not directly or indirectly condition any of the following on the willingness of a motor vehicle dealer, proposed new motor vehicle dealer, or owner of an interest in the dealership facility to enter into a site control agreement or exclusive use agreement:

(1) Awarding a franchise to a prospective new motor vehicle dealer;

(2) Adding a line make or franchise to an existing motor vehicle dealer;

(3) Renewing a franchise of an existing motor vehicle dealer;

(4) Approving the relocation of an existing motor vehicle dealer's facility; or

(5) Approving the sale or transfer of the ownership of a franchise.

(b) This subdivision does not apply to a site control agreement or an exclusive use agreement if the site control agreement or an exclusive use agreement:

(1) Is voluntarily entered into by the motor vehicle dealer or the motor vehicle dealer's lessor;

(2) Clearly and conspicuously discloses that the site control agreement or an exclusive use agreement is voluntary; and

(3) Provides for separate and valuable consideration to the motor vehicle dealer or motor vehicle dealer's lessor.

(iii) Any provision contained in any agreement that is inconsistent with this subchapter is voidable at the election of the affected motor vehicle dealer or owner of an interest in the dealership facility.

(iv) Subdivisions (a)(2)(T)(i)-(iii) of this section do not apply to motor vehicle dealers, manufacturers, or distributors of motor homes; or

(U)(i) To do any of the following:

(a) Fail to offer to all of its franchisees of the same line make any consumer rebates, dealer incentives, price or interest rate reduction, or finance terms that the franchisor offers or advertises;

(b) Offer rebates, cash incentives, or other promotional items for the sale of a vehicle by its franchisees unless the same rebate, cash incentive, or promotion is offered to all of its franchisees of the same line make, and any rebate, cash incentive, or promotion that is based on the sale of an individual vehicle is not increased for meeting a performance standard;

(c) Unreasonably discriminate among its franchisees in any program that provides assistance to its franchisees, including Internet listings, sales leads, warranty policy adjustments, marketing programs, or dealer recognition programs;

(d) Fail to offer rebates, cash incentives, or other promotional incentive programs on a fair and equitable or proportionally equivalent basis to its franchisees of the same line make; or

(e) Require a motor vehicle dealer to improve the dealer's facilities, including signs, or to replace factory required and approved facility improvements completed within the last seven (7) years to qualify for a new vehicle sales incentive program.

(ii) Subdivisions (a)(2)(U)(i)(a)-(e) of this section do not apply to motor vehicle dealers, manufacturers, or distributors of motor homes.

(3) For a manufacturer, distributor, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof:

(A) To own, operate, or control any motor vehicle dealer, provided that this subdivision (a)(3)(A) shall not be construed to prohibit the following:

(i) The operation by a manufacturer of a motor vehicle dealer for a temporary period, not to exceed one (1) year, during the transition from one (1) owner or operator to another;

(ii) The ownership or control of a motor vehicle dealer by a manufacturer during a period in which the motor vehicle dealer is being sold under a bona fide contract or purchase option to the operator of the dealership;

(iii) The ownership, operation, or control of a motor vehicle dealer by a manufacturer, if:

(a) The manufacturer has been engaged in the retail sale of new motor vehicles at the location for a continuous period of five (5) years prior to January 1, 1999; and

(b) The commission determines after a hearing on the matter at the request of any party that there is no prospective new motor vehicle dealer available to own and operate the franchise in a manner consistent with the public interest; or

(iv) The ownership, operation, or control of a new motor vehicle dealer by a manufacturer, if the commission determines after a hearing on the matter at the request of any party, that there is no prospective new motor vehicle dealer available to own and operate the franchise in a manner consistent with the public interest; or

(v) The manufacturer is:

(a) A manufacturer of specialty vehicles, such as unassembled kits, and does not sell more than ten (10) assembled vehicles annually; or

(b) A custom motorcycle builder and does not sell more than five (5) assembled motorcycles annually; or

(4)(A) For a manufacturer to unfairly compete with a motor vehicle dealer of the same line make, operating under a franchise, in the relevant market area.

(B) "Unfairly compete", as used in this section, includes, but is not limited to:

(i) Internet solicitations; and

(ii) Preferential treatment of manufacturer-operated dealerships in the supply of inventory, both as to quantity and availability of the

latest models of that line make, supply of parts, and payments for warranty and recall claims.

(C) Ownership, operation, or control of a new motor vehicle dealer by a manufacturer under the conditions set forth in subdivisions (a)(3)(A)(i)-(iv) of this section shall not constitute a violation of this subdivision (a)(4).

(5)(A) To unreasonably reduce a motor vehicle dealer's area of sales effectiveness, trade area, or similar designation without giving a notice of at least thirty (30) days of the proposed reduction.

(B) The change shall not take effect if the dealer commences an administrative action to determine whether there is good cause for the change within the thirty-day notice period.

(C) The burden of proof in an action under this subdivision (a)(5) shall be on the manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division to prove that good cause exists to change the motor vehicle dealer's area of sales effectiveness, trade area, or similar designation.

(b)(1) Notwithstanding the terms of any franchise except a settlement agreement voluntarily entered into, it shall be a violation for a motor vehicle franchiser to require a motor vehicle franchisee to agree to a term or condition in any franchise as a condition of the offer, grant, or renewal of the franchise or the approval of the sale, acquisition, or transfer of the assets of a new motor vehicle dealer, which:

(A) Requires the motor vehicle franchisee to waive trial by jury in actions involving the motor vehicle franchiser;

(B) Specifies the jurisdictions, venues, or tribunal in which disputes arising with respect to the franchise, lease, or agreement shall or shall not be submitted for resolution, or otherwise prohibits a motor vehicle franchisee from bringing an action in a particular forum otherwise available under federal or state law;

(C) Requires a new motor vehicle dealer to pay the attorney's fees of a manufacturer, importer, second-stage manufacturer, converter, or distributor;

(D) Requires the motor vehicle franchisee to waive any remedy or defense available to the franchisee or other provision protecting the interests of the franchisee under this chapter; or

(E)(i) Requires that disputes between the motor vehicle franchiser and motor vehicle franchisee be submitted to binding arbitration or to any other binding alternative dispute resolution procedure provided by the franchiser.

(ii) However, any franchise, lease, or agreement may authorize the submission of a dispute to arbitration or to binding alternative dispute resolution if the motor vehicle franchiser and motor vehicle franchisee voluntarily agree to submit the dispute to binding arbitration or binding alternative dispute resolution after the dispute arises.

(iii) If the franchiser and franchisee agree to binding arbitration, the arbitrator shall apply the provisions of this chapter in resolving

the pertinent controversy and shall provide the parties to a contract with a written explanation of the factual and legal basis for the award. Either party may appeal to the commission a decision of an arbitrator on the ground that the arbitrator failed to apply this chapter.

(2) For the purposes of this section, it shall be presumed that a motor vehicle franchisee has been required to agree to a term or condition in violation of this section as a condition of the offer, grant, or renewal of a franchise or of any lease or agreement ancillary or collateral to a franchise, if the motor vehicle franchisee, at the time of the offer, grant, or renewal of the franchise, lease, or agreement or the approval of the sale, acquisition, or transfer of the assets of a new motor vehicle dealer, is not offered the option of an identical franchise, lease, or agreement without the terms or conditions prescribed by this section.

(c) Concerning any sale of a motor vehicle or vehicles to the State of Arkansas or to the several counties or municipalities thereof or to any other political subdivision thereof, no manufacturer or distributor shall offer any discounts, refunds, or any other similar type inducements to any dealer without making the same offers to all other of its dealers within the state. If the inducements are made, the manufacturer or distributor shall give simultaneous notice thereof to all of its dealers within the state.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1987, No. 663, § 1; 1989, No. 65, §§ 4, 5; 1991, No. 411, § 4; 1991, No. 730, § 1; 1997, No. 1154, § 13; 1999, No. 1042, § 9; 2001, No. 1053, § 16; 2007, No. 746, §§ 3, 4; 2009, No. 756, §§ 13-15; 2011, No. 800, § 1; 2011, No. 1005, §§ 10-16; 2013, No. 561, § 6; 2013, No. 1133, §§ 9, 10.

Publisher's Notes. For text of section effective January 1, 2014, see the following version.

Amendments. The 2009 amendment rewrote (a)(2)(C)(v) and (a)(2)(K)(ii), inserted (a)(2)(K)(ix), inserted "a sales and service agreement, or a bona fide contract" in (a)(2)(M), and made related and minor stylistic changes.

The 2011 amendment by No. 800 added (a)(3)(A)(v).

The 2011 amendment by No. 1005 deleted "duly" preceding "licensed motor vehicle dealer" in (a)(2)(A)(i); subdivided (a)(2)(B)(i), added the present introductory language, and inserted "motor vehicle" preceding "dealer" twice in (a)(2)(B)(i)(b); added (a)(2)(C)(i)(c); added the (a)(2)(C)(iv)(a) and (b) designations; inserted "as allowed under the Arkansas

Administrative Procedure Act, § 25-15-201 et seq." in (a)(2)(C)(iv)(b); added (a)(2)(C)(iv)(c); added present (a)(2)(K)(vii) and redesignated former (a)(2)(K)(vii) through (ix) as present (a)(2)(K)(viii) through (x); added (a)(2)(Q) and (a)(5); and made stylistic changes.

The 2013 amendment by No. 561 substituted "seven (7) years to qualify" for "five (5) years in order to qualify" in (a)(2)(U)(v) (now (a)(2)(U)(i)(e)).

The 2013 amendment by No. 1133 made redesignations throughout former (a)(2)(K); substituted "(a)(2)(K)(i)(g)(2) and (3)" for "(a)(2)(K)(vii)(b) and (c)" in present (a)(2)(K)(i)(g)(1); substituted "(a)(2)(K)(i)(g)(1) and (2)" for "(a)(2)(K)(vii)(a) and (b)" in present (a)(2)(K)(g)(3); in present (a)(2)(K)(i)(i), inserted "(a)" following "(a)(2)(K)(i)" and substituted "(a)(2)(K)(i)(b) - (g)" for "(a)(2)(K)(ii) - (vii)"; redesignated former (a)(2)(U)(i) as present (a)(2)(U)(i)(a); inserted "To do any of the following" as the introductory language of (a)(2)(U)(i); redesignated former (a)(2)(U)(ii) through (a)(2)(U)(v) and (a)(2)(U)(vi) as present (a)(2)(U)(i)(b) through (a)(2)(U)(i)(e) and (a)(2)(U)(ii), respectively; and substituted "(a)(2)(U)(i)(a) - (e)" for "(a)(2)(U)(i) - (v)" in present (a)(2)(U)(ii).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Annual Survey of Caselaw: Business Law, 27 U. Ark. Little Rock L. Rev. 593.

CASE NOTES

ANALYSIS

Motor Vehicle Comm'n, 357 Ark. 125, 161 S.W.3d 788 (2004).

New Dealer.
Termination.

Termination.

Because the Arkansas Motor Vehicle Commission failed in its obligation to make sufficient findings of fact relevant to the contested issue of what constituted the current model year, the supreme court could not determine whether the Commission had resolved that issue in conformity with the law. *Voltage Vehicles v. Ark. Motor Vehicle Comm'n*, 2012 Ark. 386, — S.W.3d — (2012).

New Dealer.

Arkansas Motor Vehicle Commission exceeded the scope of its duty under subdivision (a)(2)(I) of this section and acted arbitrarily in substituting its own analysis for a manufacturer's evaluation of its generally applied criteria regarding whether a prospective buyer was qualified to buy a dealership. *Ford Motor Co. v. Ark.*

23-112-403. Manufacturers, distributors, second-stage manufacturers, importers, or converters. [Effective January 1, 2014.]

(a) It shall be unlawful:

(1) For a manufacturer, distributor, second-stage manufacturer, importer, converter, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof, to coerce or attempt to coerce any motor vehicle dealer:

(A) To order or accept delivery of any motor vehicles, appliances, equipment, parts, or accessories therefor or any other commodities which shall not have been voluntarily ordered by the motor vehicle dealer;

(B) To order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of the motor vehicle as publicly advertised by the manufacturer thereof;

(C) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever;

(D) To contribute or pay money or anything of value into any cooperative or other advertising program or fund; or

(E) To file for or to use a legal or "d/b/a" name or identification other than a name of choice by the dealer;

(2) For a manufacturer, distributor, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof:

(A)(i) To refuse to deliver, in reasonable quantities and within a reasonable time after receipt of a dealer's order to any licensed motor vehicle dealer having a franchise or contractual arrangement for the

retail sale of new motor vehicles sold or distributed by the manufacturer, distributor, distributor branch or division, or factory branch or division, any motor vehicles that are covered by the franchise or contract specifically publicly advertised by the manufacturer, distributor, distributor branch or division, or factory branch or division to be available for immediate delivery.

(ii) However, the failure to deliver any motor vehicle shall not be considered a violation of this chapter if the failure is due to forces of nature, work stoppages or delays due to strikes or labor difficulties, freight, embargoes, or other causes over which the manufacturer or distributor, or any agent thereof, has no control;

(B)(i) To engage in any of the following:

(a) To coerce or attempt to coerce any motor vehicle dealer to enter into any agreement with the manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof; or

(b) To do any other act prejudicial to the motor vehicle dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor, distributor branch or division, or factory branch or division and the motor vehicle dealer.

(ii) However, good faith notice to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of this chapter;

(C)(i)(a) To terminate or cancel the franchise or selling agreement of any dealer without due cause.

(b) The nonrenewal of a franchise or selling agreement without due cause shall constitute an unfair termination or cancellation, regardless of the terms or provisions of the franchise or selling agreement.

(c) As used in this subchapter, tests for determining what constitutes due cause for a manufacturer or distributor to terminate a franchise or sales and service agreement include whether the motor vehicle dealer:

(1) Has transferred a majority ownership interest in the dealership without the manufacturer's or distributor's consent;

(2) Has made a material misrepresentation or committed a fraudulent act, or both, in applying for or in acting under the franchise agreement;

(3) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against him or her that has not been discharged within sixty (60) days after the filing, is in default under a security agreement in effect with the manufacturer or distributor, or is in receivership;

(4) Has engaged in unfair business or trade practices;

(5) Has failed to fulfill the warranty obligations of the manufacturer or distributor required to be performed by the motor vehicle dealer;

(6) Has inadequate motor vehicle sales and service facilities, equipment, vehicle parts, and unqualified service personnel to pro-

vide for the needs of the consumers for the motor vehicles handled by the franchisee and is rendering inadequate service to the public;

(7) Has failed to comply with an applicable federal, state, or local licensing law;

(8) Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, or dealership;

(9) Has failed to operate in the normal course of business for ten (10) consecutive business days or has terminated his or her business;

(10) Has relocated his or her place of business without the manufacturer's or distributor's consent; or

(11) Has failed to comply with the terms of the franchise, the reasonableness and fairness of the franchise terms, and the extent and materiality of the franchisee's failure to comply.

(d) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division shall have the burden of proving whether there is due cause to terminate a franchise or sales and service agreement.

(ii)(a) The manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof shall notify a motor vehicle dealer in writing and forward a copy of the notice to the Arkansas Motor Vehicle Commission of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty (60) days before the effective date thereof, stating the specific grounds for the termination or cancellation.

(b) However, in the event that the commission finds that the franchise or selling agreement has been abandoned by the dealer, the commission, for good cause, may waive the sixty-day notice requirement and allow for the immediate termination of the franchise or selling agreement.

(iii)(a) The manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof shall notify a motor vehicle dealer in writing and forward a copy of the notice to the commission at least sixty (60) days before the contractual term of its franchise or selling agreement expires that the franchise or selling agreement will not be renewed, stating the specific grounds for the nonrenewal in those cases in which there is no intention to renew it.

(b) In no event shall the contractual term of any franchise or selling agreement expire without the written consent of the motor vehicle dealer involved prior to the expiration of at least sixty (60) days following the written notice.

(iv)(a) A motor vehicle dealer who receives written notice that its franchise or selling agreement is being terminated or cancelled or who receives written notice that its franchise or selling agreement will not be renewed may file with the commission within the sixty-day notice period a verified complaint for the commission's determination as to whether the termination or cancellation or nonrenewal is unfair under this chapter.

(b) That franchise or selling agreement shall continue in effect until final determination of the issues raised in the complaint as allowed under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., notwithstanding anything to the contrary contained in this chapter or in the franchise or selling agreement.

(c) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division shall have the burden of proving whether there is due cause to terminate a franchise or sales and service agreement.

(v)(a) If the franchise agreement, sales and service agreement, or bona fide contract is terminated or cancelled, the terminating or canceling party shall notify the commission of the termination or cancellation of the franchise or selling agreement at least sixty (60) days before the effective date.

(b) For motor vehicles other than motor homes, this subdivision (a)(2)(C)(v) applies to both voluntary and involuntary termination or cancellation of the franchise or selling agreement;

(D) To resort to or use any false or misleading advertisement in connection with its business as a manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof;

(E)(i) To offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price charged to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or programs, which results in a lesser actual price.

(ii) However, the provisions of this subdivision (a)(2)(E) shall not apply:

(a) To sales to a motor vehicle dealer for resale to any unit of federal, state, or local government;

(b) To sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated, or used by the dealer in a driver education program; or

(c) So long as a manufacturer or distributor, or any agent thereof, offers to piggyback bid allowances to all motor vehicle dealers of the same line make at the same allowance for sales to a local government in that dealer's relevant market area.

(iii) Nothing contained in this subdivision (a)(2)(E) shall be construed to prevent the utilization of sales promotion plans or programs or the offering of volume discounts through new motor vehicle dealers, for fleet or volume purchasers, if the program is available to all new motor vehicle dealers from the same manufacturer in this state;

(F) To offer to sell or to sell any new motor vehicle to any person, except a wholesaler or distributor, at a lower actual price than the actual price offered and charged to a motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device which results in a lesser actual price;

(G)(i) To offer to sell or to sell parts and accessories to any new motor vehicle dealer for use in his or her own business for the purpose of repairing or replacing the parts and accessories, or comparable parts and accessories, at a lower actual price than the actual price charged to any other new motor vehicle dealer for similar parts and accessories for use in its own business.

(ii) However, it is recognized that certain motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets. Therefore, nothing contained in this subdivision (a)(2)(G) shall be construed to prevent a manufacturer or distributor, or any agent thereof, from selling to a motor vehicle dealer who operates and serves as a wholesaler of parts and accessories such parts and accessories as may be ordered by the motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories;

(H)(i) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of its dealership or the means by or through which it finances the operation of the dealership, provided that:

(a) The dealer at all times meets any capital standards agreed to between the dealership and the manufacturer or distributor; and

(b) The standards are deemed reasonable by the commission.

(ii) If the dealer of record requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond in writing, giving or withholding consent, within sixty (60) days of receipt of the written request, consent is deemed to be given;

(I)(i) Notwithstanding the terms of any franchise agreement, to fail to give effect or to attempt to prevent any sale or transfer of a dealer, dealership, or franchise or interest therein, or management thereof, provided that the manufacturer or distributor has received sixty (60) days' written notice prior to the transfer or sale, and unless:

(a) The transferee does not meet the criteria generally applied by the manufacturer in approving new motor vehicle dealers or agree to be bound by all the terms and conditions of the dealer agreement, and the manufacturer so advises its dealer within sixty (60) days of receipt of the notice; or

(b) It is shown to the commission after a hearing that the result of such a sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

(ii) If the franchisee of record requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond by giving or withholding consent in writing within sixty (60) days of receipt of the written request consent is deemed to be given;

(J)(i) Notwithstanding the terms of any franchise agreement, to prevent, attempt to prevent, or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution applicable to the decedent's estate, provided that the manufacturer or distributor has received sixty (60) days' written notice prior to the transfer or sale, and unless:

(a) The transferee does not meet the criteria generally applied by the manufacturer in approving new motor vehicle dealers or agree to be bound by all the terms and conditions of the dealer agreement, and the manufacturer so advises its dealer within thirty (30) days of receipt of the notice; or

(b) It is shown to the commission, after notice and hearing, that the result of such a succession will be detrimental to the public interest or to the representation of the manufacturer or distributor.

(ii) However, nothing in this subdivision (a)(2)(J) shall prevent a dealer, during his or her lifetime, from designating any person as his or her successor dealer by written instrument filed with the manufacturer or distributor.

(iii) If the dealer's successor, heir, or devisee requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond by giving or withholding consent in writing, within thirty (30) days of receipt of the written request, consent is deemed to be given;

(K)(i) Notwithstanding the terms of any franchise agreement, to fail to pay to a dealer or any lienholder in accordance with their respective interests after the termination of franchise:

(a) The dealer cost plus any charges by the manufacturer, distributor, or a representative for distribution, delivery, and taxes, less all allowances paid to the dealer by the manufacturer, distributor, or representative for new, unsold, undamaged, and complete motor vehicles of current model year and one (1) year prior model year in the dealer's inventory;

(b) The dealer cost of each new, unused, undamaged, and unsold part or accessory if the part or accessory:

(1) Was purchased from the manufacturer by the dealer and is in the original package;

(2) Is identical to a part or accessory in the current parts catalogue except for the number assigned to the part or accessory; or

(3) Was purchased in the ordinary course of business by the dealer from another authorized dealer so long as the authorized dealer purchased the part or accessory directly from the manufacturer or distributor or from an outgoing authorized dealer as part of the dealer's initial inventory;

(c) The fair market value of each undamaged sign owned by the dealer which bears a trademark or trade name used or claimed by the manufacturer, distributor, or representative, if the sign was pur-

chased from or purchased at the request of the manufacturer, distributor, or representative;

(d) The fair market value of all special tools and automotive service equipment owned by the dealer that were recommended in writing and designated as special tools and equipment and purchased from or purchased at the request of the manufacturer, distributor, or representative, if the tools and equipment are in usable and good condition except for reasonable wear and tear;

(e) The cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, tools, and equipment subject to repurchase;

(f) The balance of all claims for warranty and recall service and all other money owed by the manufacturer to the dealer;

(g)(1) Except as provided under subdivisions (a)(2)(K)(i)(g)(2) of this section, the fair market value of the franchise that is at least equivalent to the fair market value of the franchise one (1) day before the manufacturer announces the action that results in the termination or discontinuance of a line make.

(2) If the termination, cancellation, discontinuance, or nonrenewal is due to a manufacturer's change in distributors or manufacturer, the manufacturer may avoid paying fair market value to the new motor vehicle dealer if the distributor, manufacturer, new distributor, or new manufacturer offers the new motor vehicle dealer a franchise agreement with terms substantially similar to terms offered to other same line make new motor vehicle dealers.

(h)(1) Compensation for the actual pecuniary loss caused by the franchise termination, cancellation, or nonrenewal unless for due cause.

(2) In determining the actual pecuniary loss, the value of any continued service or parts business available to the dealer for the line make covered by the franchise shall be considered. If the dealer and the manufacturer, importer, or distributor cannot agree on the amount of compensation to be paid under this subchapter, either party may file an action in a court of competent jurisdiction; or

(i) Any sums due as provided by subdivision (a)(2)(K)(i)(a) of this section within sixty (60) days after termination of a franchise and any sums due as provided by subdivisions (a)(2)(K)(i)(b)-(g) of this section within ninety (90) days after termination of a franchise. As a condition of payment, the dealer shall comply with reasonable requirements with respect to the return of inventory as are set out in the terms of the franchise agreement. A manufacturer, distributor, or representative who fails to pay those sums within the prescribed time or at such time as the dealer and lienholder, if any, proffer good title before the prescribed time for payment, is liable to the dealer for:

(1) The greatest of dealer cost, fair market value, or current price of the inventory;

(2) Interest on the amount due calculated at the rate applicable to a judgment of a court; and

(3) Reasonable attorney's fees and costs.

(ii) Obligations under this subdivision (a)(2)(K) do not apply if the termination is a result of the conviction of the franchisee in a court of competent jurisdiction of an offense that is punishable by a term of imprisonment in excess of one (1) year and the offense is substantially related to the business conducted pursuant to the franchise;

(L)(i) To fail or refuse to offer its same line make franchised dealers all models manufactured for that line make.

(ii) No additional requirements over the requirements originally required to initially obtain a dealership may be required of existing franchised dealers to receive any model by that line make;

(M)(i) To offer to sell or to sell any motor vehicle to a consumer, except through a licensed new motor vehicle dealer holding a franchise, a sales and service agreement, or a bona fide contract for the line make covering the new motor vehicle or as may otherwise be provided in subdivision (a)(3) of this section.

(ii) This subdivision (a)(2)(M) does not apply to manufacturer sales of new motor vehicles to the federal government, charitable organizations, or employees of the manufacturer;

(N) To prohibit or require a dealer to enter into a franchise or sales agreement with third parties, regardless of the location of the dealership or proposed dealership;

(O)(i) To require, coerce, or attempt to coerce any franchisee in this state to refrain from or to terminate, cancel, or refuse to continue any franchise based upon participation by the franchisee in the management of, investment in, or the acquisition of a franchise for the sale of any other line of new motor vehicle or related products in the same or separate facilities as those of the franchiser.

(ii) This subdivision (a)(2)(O) does not apply unless:

(a) The franchisee maintains a reasonable line of credit for each make or line of new motor vehicle;

(b) The franchisee remains in compliance with the franchise and any reasonable facilities requirement of the franchiser; and

(c) No change is made in the principal management of the franchisee.

(iii) The reasonable facilities requirement shall not include any requirement that the franchisee establish or maintain exclusive facilities, personnel, or display space when such requirements would not otherwise be justified by reasonable business considerations.

(iv)(a) Before the addition of a line make to the dealership facilities, the franchisee must first request consent of the franchiser, if required by the franchise agreement.

(b) Any decision of the franchiser with regard to dualing of two (2) or more franchises shall be granted or denied within sixty (60) days after a written request from the new motor vehicle dealer. The franchiser's failure to respond timely to a dualing request shall be deemed to be approval of the franchisee's request;

(P)(i) To fail to continue in full force and operation a motor vehicle dealer franchise agreement, notwithstanding a change, in whole or in

part, of an established plan or system of distribution or ownership of the manufacturer of the motor vehicles offered for sale under the franchise agreement.

(ii) The appointment of a new importer or distributor for motor vehicles offered for sale under a franchise agreement described in subdivision (a)(2)(P)(i) of this section shall be deemed to be a change of an established plan or system of distribution;

(Q)(i)(a) Unless the manufacturer's, distributor's, second-stage manufacturer's, importer's, converter's, manufacturer's branch or division, or distributor's branch or division requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and the motor vehicle dealer's market and notwithstanding the terms of a franchise agreement or sales and service agreement, to require, coerce, or attempt to coerce any new motor vehicle dealer by program, policy, standard, or otherwise to:

(1) Change location of the dealership;

(2) Make any substantial changes, alterations, or remodeling to a motor vehicle dealer's sales or service facilities; or

(3) Replace a motor vehicle dealer's sales or service facilities.

(b) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division shall have the burden of proving that changes, alterations, remodeling, or replacement to a motor vehicle dealer's sales or service facilities are reasonable and justifiable under this subchapter.

(ii)(a) However, a manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division, consistent with its allocation obligations at law and to its other same line make motor vehicle dealers, may provide to a motor vehicle dealer a commitment to supply additional vehicles or provide a loan or grant of money as an inducement for the motor vehicle dealer to expand, improve, remodel, alter, or renovate its facilities if the provisions of the commitment are contained in a writing voluntarily agreed to by the dealer and are made available, on substantially similar terms, to any of the licensee's other same line make dealers who voluntarily agree to make a substantially similar facility expansion, improvement, remodeling, alteration, or renovation.

(b) Subdivisions (a)(2)(Q)(i) and (ii)(a) of this section do not require a manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division to provide financial support for or contribution to the purchase sale of the assets of or equity in a motor vehicle dealer or a relocation of a motor vehicle dealer because such support has been provided to other purchases, sales, or relocations.

(c) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor

branch or division shall not take or threaten to take any action that is unfair or adverse to a dealer who does not enter into an agreement pursuant to subdivisions (a)(2)(Q)(i) and (ii)(a) of this section.

(d) This subdivision does not affect any contract between a licensee and any of its dealers regarding relocation, expansion, improvement, remodeling, renovation, or alteration which exists on July 27, 2011;

(R) To unreasonably withhold approval for a new motor vehicle dealer to purchase substantially similar goods and services related to facility changes, alterations, or remodels from vendors the dealer chooses;

(S) To require as a prerequisite to receiving a model or a series of vehicles a dealer to:

(i) Pay an extra fee or remodel, renovate, or recondition the dealer's existing facilities unless justified by the technological requirements for the sale or service of a vehicle;

(ii) Purchase unreasonable advertising displays, training, tools, or other materials;

(iii) Establish exclusive facilities; or

(iv) Establish dedicated personnel.

(T)(i)(a) To use any written instrument, agreement, or waiver, to attempt to nullify or modify any provision of this chapter or prevent a new motor vehicle dealer from bringing an action in a particular forum otherwise available under law.

(b) An instrument contrary to this subdivision (a)(2)(T)(i) is void.

(c) However, this subdivision shall not apply to:

(1) Voluntary agreements in which separate and valuable consideration has been offered and accepted; or

(2) Settlement agreements entered into as a result of a dispute.

(ii)(a) Except as provided in subdivision (a)(2)(Q)(ii)(b) of this section, a manufacturer, distributor, or factory branch shall not directly or indirectly condition any of the following on the willingness of a motor vehicle dealer, proposed new motor vehicle dealer, or owner of an interest in the dealership facility to enter into a site control agreement or exclusive use agreement:

(1) Awarding a franchise to a prospective new motor vehicle dealer;

(2) Adding a line make or franchise to an existing motor vehicle dealer;

(3) Renewing a franchise of an existing motor vehicle dealer;

(4) Approving the relocation of an existing motor vehicle dealer's facility; or

(5) Approving the sale or transfer of the ownership of a franchise.

(b) This subdivision does not apply to a site control agreement or an exclusive use agreement if the site control agreement or an exclusive use agreement:

(1) Is voluntarily entered into by the motor vehicle dealer or the motor vehicle dealer's lessor;

(2) Clearly and conspicuously discloses that the site control agreement or an exclusive use agreement is voluntary; and

(3) Provides for separate and valuable consideration to the motor vehicle dealer or motor vehicle dealer's lessor.

(iii) Any provision contained in any agreement that is inconsistent with this subchapter is voidable at the election of the affected motor vehicle dealer or owner of an interest in the dealership facility; or

(U) To do any of the following:

(i) Fail to offer to all of its franchisees of the same line make any consumer rebates, dealer incentives, price or interest rate reduction, or finance terms that the franchisor offers or advertises;

(ii) Offer rebates, cash incentives, or other promotional items for the sale of a vehicle by its franchisees unless the same rebate, cash incentive, or promotion is offered to all of its franchisees of the same line make, and any rebate, cash incentive, or promotion that is based on the sale of an individual vehicle is not increased for meeting a performance standard;

(iii) Unreasonably discriminate among its franchisees in any program that provides assistance to its franchisees, including Internet listings, sales leads, warranty policy adjustments, marketing programs, or dealer recognition programs;

(iv) Fail to offer rebates, cash incentives, or other promotional incentive programs on a fair and equitable or proportionally equivalent basis to its franchisees of the same line make; or

(v) Require a motor vehicle dealer to improve the dealer's facilities, including signs, or to replace factory required and approved facility improvements completed within the last seven (7) years to qualify for a new vehicle sales incentive program.

(3) For a manufacturer, distributor, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof:

(A) To own, operate, or control any motor vehicle dealer, provided that this subdivision (a)(3)(A) shall not be construed to prohibit the following:

(i) The operation by a manufacturer of a motor vehicle dealer for a temporary period, not to exceed one (1) year, during the transition from one (1) owner or operator to another;

(ii) The ownership or control of a motor vehicle dealer by a manufacturer during a period in which the motor vehicle dealer is being sold under a bona fide contract or purchase option to the operator of the dealership;

(iii) The ownership, operation, or control of a motor vehicle dealer by a manufacturer, if:

(a) The manufacturer has been engaged in the retail sale of new motor vehicles at the location for a continuous period of five (5) years prior to January 1, 1999; and

(b) The commission determines after a hearing on the matter at the request of any party that there is no prospective new motor vehicle dealer available to own and operate the franchise in a manner consistent with the public interest; or

(iv) The ownership, operation, or control of a new motor vehicle dealer by a manufacturer, if the commission determines after a hearing on the matter at the request of any party, that there is no prospective new motor vehicle dealer available to own and operate the franchise in a manner consistent with the public interest; or

(v) The manufacturer is:

(a) A manufacturer of specialty vehicles, such as unassembled kits, and does not sell more than ten (10) assembled vehicles annually; or

(b) A custom motorcycle builder and does not sell more than five (5) assembled motorcycles annually; or

(4)(A) For a manufacturer to unfairly compete with a motor vehicle dealer of the same line make, operating under a franchise, in the relevant market area.

(B) "Unfairly compete", as used in this section, includes, but is not limited to:

(i) Internet solicitations; and

(ii) Preferential treatment of manufacturer-operated dealerships in the supply of inventory, both as to quantity and availability of the latest models of that line make, supply of parts, and payments for warranty and recall claims.

(C) Ownership, operation, or control of a new motor vehicle dealer by a manufacturer under the conditions set forth in subdivisions (a)(3)(A)(i)-(iv) of this section shall not constitute a violation of this subdivision (a)(4).

(5)(A) To unreasonably reduce a motor vehicle dealer's area of sales effectiveness, trade area, or similar designation without giving a notice of at least thirty (30) days of the proposed reduction.

(B) The change shall not take effect if the dealer commences an administrative action to determine whether there is good cause for the change within the thirty-day notice period.

(C) The burden of proof in an action under this subdivision (a)(5) shall be on the manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division to prove that good cause exists to change the motor vehicle dealer's area of sales effectiveness, trade area, or similar designation.

(b)(1) Notwithstanding the terms of any franchise except a settlement agreement voluntarily entered into, it shall be a violation for a motor vehicle franchiser to require a motor vehicle franchisee to agree to a term or condition in any franchise as a condition of the offer, grant, or renewal of the franchise or the approval of the sale, acquisition, or transfer of the assets of a new motor vehicle dealer, which:

(A) Requires the motor vehicle franchisee to waive trial by jury in actions involving the motor vehicle franchiser;

(B) Specifies the jurisdictions, venues, or tribunal in which disputes arising with respect to the franchise, lease, or agreement shall or shall not be submitted for resolution, or otherwise prohibits a motor vehicle franchisee from bringing an action in a particular forum otherwise available under federal or state law;

(C) Requires a new motor vehicle dealer to pay the attorney's fees of a manufacturer, importer, second-stage manufacturer, converter, or distributor;

(D) Requires the motor vehicle franchisee to waive any remedy or defense available to the franchisee or other provision protecting the interests of the franchisee under this chapter; or

(E)(i) Requires that disputes between the motor vehicle franchiser and motor vehicle franchisee be submitted to binding arbitration or to any other binding alternative dispute resolution procedure provided by the franchiser.

(ii) However, any franchise, lease, or agreement may authorize the submission of a dispute to arbitration or to binding alternative dispute resolution if the motor vehicle franchiser and motor vehicle franchisee voluntarily agree to submit the dispute to binding arbitration or binding alternative dispute resolution after the dispute arises.

(iii) If the franchiser and franchisee agree to binding arbitration, the arbitrator shall apply the provisions of this chapter in resolving the pertinent controversy and shall provide the parties to a contract with a written explanation of the factual and legal basis for the award. Either party may appeal to the commission a decision of an arbitrator on the ground that the arbitrator failed to apply this chapter.

(2) For the purposes of this section, it shall be presumed that a motor vehicle franchisee has been required to agree to a term or condition in violation of this section as a condition of the offer, grant, or renewal of a franchise or of any lease or agreement ancillary or collateral to a franchise, if the motor vehicle franchisee, at the time of the offer, grant, or renewal of the franchise, lease, or agreement or the approval of the sale, acquisition, or transfer of the assets of a new motor vehicle dealer, is not offered the option of an identical franchise, lease, or agreement without the terms or conditions prescribed by this section.

(c) Concerning any sale of a motor vehicle or vehicles to the State of Arkansas or to the several counties or municipalities thereof or to any other political subdivision thereof, no manufacturer or distributor shall offer any discounts, refunds, or any other similar type inducements to any dealer without making the same offers to all other of its dealers within the state. If the inducements are made, the manufacturer or distributor shall give simultaneous notice thereof to all of its dealers within the state.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1987, No. 663, § 1; 1989, No. 65, §§ 4, 5; 1991, No. 411, § 4; 1991, No. 730, § 1; 1997, No. 1154, § 13; 1999, No. 1042, § 9; 2001, No. 1053, § 16; 2007, No. 746, §§ 3, 4; 2009, No. 756, §§ 13-15; 2011, No. 800, § 1; 2011, No. 1005, §§ 10-16; 2013, No. 561, § 6; 2013,

No. 1043, §§ 6 – 8; 2013, No. 1133, §§ 9, 10.

Publisher's Notes. For text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2009 amendment rewrote (a)(2)(C)(v) and (a)(2)(K)(ii), inserted (a)(2)(K)(ix), inserted "a sales and service agreement, or a bona fide contract"

in (a)(2)(M), and made related and minor stylistic changes.

The 2011 amendment by No. 800 added (a)(3)(A)(v).

The 2011 amendment by No. 1005 deleted “duly” preceding “licensed motor vehicle dealer” in (a)(2)(A)(i); subdivided (a)(2)(B)(i), added the present introductory language, and inserted “motor vehicle” preceding “dealer” twice in (a)(2)(B)(i)(b); added (a)(2)(C)(i)(c); added the (a)(2)(C)(iv)(a) and (b) designations; inserted “as allowed under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.” in (a)(2)(C)(iv)(b); added (a)(2)(C)(iv)(c); added present (a)(2)(K)(vii) and redesignated former (a)(2)(K)(vii) through (ix) as present (a)(2)(K)(viii) through (x); added (a)(2)(Q) and (a)(5); and made stylistic changes.

The 2013 amendment by No. 561 substituted “seven (7) years to qualify” for

“five (5) years in order to qualify” in (a)(2)(U)(v) (now (a)(2)(U)(i)(e)).

The 2013 amendment by No. 1043 deleted (a)(2)(C)(v)(c), (a)(2)(K)(vii)(c), (a)(2)(Q)(iii), (a)(2)(R)(ii), (a)(2)(S)(ii), (a)(2)(T)(iv) and (a)(2)(U)(iv) which referred to mobile homes.

The 2013 amendment by No. 1133 made redesignations throughout former (a)(2)(K); substituted “(a)(2)(K)(i)(g) (2)” for “(a)(2)(K)(vii)(b)” in present (a)(2)(K)(i)(g)(1); in present (a)(2)(K)(i)(i), inserted “(a)” following “(a)(2)(K)(i)” and substituted “(a)(2)(K)(i)(b) - (g)” for “(a)(2)(K)(ii) - (vii)”; redesignated former (a)(2)(U)(i) as present (a)(2)(U)(a); inserted “To do any of the following” as the introductory language of (a)(2)(U); redesignated former (a)(2)(U)(ii) through (a)(2)(U)(v) as present (a)(2)(U)(b) through (a)(2)(U)(e).

Effective Dates. Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-404. Motor vehicle lessors.

It is unlawful for a motor vehicle lessor or any agent, employee, or representative thereof:

(1) To represent and to offer for sale or to sell as a new motor vehicle a motor vehicle that has been used or was intended to be used and operated for leasing or rental purposes or which is otherwise a used motor vehicle;

(2) To resort to, use, or employ any false, fraudulent, deceptive, or misleading advertising or representations in connection with the business of leasing or renting motor vehicles; or

(3) To sell or offer to sell a motor vehicle from an unlicensed location.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 2009, No. 756, § 16.

Amendments. The 2009 amendment deleted “or unused” following “new” in (1), and made minor stylistic changes.

23-112-406. Acting as broker.

(a) Notwithstanding any other statute, a person may not act as, offer to act as, or hold himself or herself out to be a broker of new motor vehicles.

(b)(1) To effectuate this chapter, “arranges or offers to arrange a transaction” means soliciting or referring buyers for new motor vehicles for a fee, commission, or other valuable consideration.

(2) “Arranges or offers to arrange a transaction” does not include advertising so long as the person’s business primarily includes the business of broadcasting, printing, publishing, or advertising for others in their own names.

(c) **BROKERING NEW MOTOR VEHICLES.**

(1) A buyer referral service, program, plan, club, or any other entity that accepts fees for arranging a transaction involving the sale of a new motor vehicle is a broker. The payment of a fee to such an entity is aiding and abetting brokering. However, any service, plan, program, club, or other entity that forwards referrals to dealerships may lawfully operate if the following conditions are met:

(A) There are no exclusive market areas offered to dealers by the program and all dealers are allowed to participate on equal terms;

(B)(i) Participation by dealers in the program is not restricted by conditions such as limiting the number of franchise lines or discrimination by size of dealership or location.

(ii) Total number of participants in the program may be restricted if the program is offered to all dealers at the same time with no regard to the franchise;

(C) All participants pay the same fee for participation in the program and that shall be a weekly, monthly, or annual fee, regardless of the size, location, or line make of the dealership;

(D) A person is not to be charged a fee on a per-referral basis or any other basis that could be considered a transaction-related fee;

(E) The program does not set or suggest to the dealer or customer any price of vehicles or trade-ins; and

(F) The program does not advertise or promote its plan in the manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(2) All programs must comply with Regulation 1 of the Arkansas Motor Vehicle Commission Rules and Regulations.

(d) The provisions of this section do not apply to any person or entity which is exempt from this chapter.

History. Acts 1975, No. 388, § 10; 1985, No. 1032, § 6; 1985, No. 1058, § 6; A.S.A. 1947, § 75-2310; Acts 2001, No. 1053, § 17; 2009, No. 756, § 17.

Amendments. The 2009 amendment subdivided (b), substituted “transaction” for “transition” in (b)(1), and made minor stylistic changes.

SUBCHAPTER 5 — HEARINGS AND APPEALS

SECTION.

23-112-501. Right to hearing. [Effective until January 1, 2014.]

23-112-501. Right to hearing. [Effective January 1, 2014.]

SECTION.

23-112-503. Notice — Location of hearing.

23-112-509. Summons, citation, and subpoena.

Effective Dates. Acts 2009, No. 756, § 25: Apr. 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that motor vehicle dealers are experiencing economic difficulties related to the

state of the national economy and the motor vehicle industry in particular; that an unprecedented number of motor vehicle dealers may terminate their franchises as a result of these economic conditions; and that this act is immediately

necessary to assist dealers that are facing possible termination of their franchise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither

approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-501. Right to hearing. [Effective until January 1, 2014.]

(a)(1) The Arkansas Motor Vehicle Commission may deny an application for a license if the application is considered inadequate after the initial review by the Executive Director of the Arkansas Motor Vehicle Commission.

(2) Within thirty (30) days after the executive director denies an application under subdivision (a)(1) of this section, the affected applicant may protest the executive director’s decision and request a hearing before the commission.

(b) The commission shall not:

(1) Revoke or suspend a license without first giving the licensee a hearing or an opportunity to be heard on the question of whether there are sufficient grounds under this chapter upon which to base the revocation or suspension; or

(2) Impose a civil penalty pursuant to § 23-112-314 without first giving the respondent a hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 1999, No. 1042, § 10; 2009, No. 756, § 18.

effective January 1, 2014, see the following version.

Amendments. The 2009 amendment rewrote and redesignated the section.

Publisher’s Notes. For text of section

23-112-501. Right to hearing. [Effective January 1, 2014.]

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(2) Within thirty (30) days after the executive director denies an application under subdivision (a)(1) of this section, the affected applicant may protest the executive director’s decision and request a hearing before the commission.

(b) The commission shall not:

(1) Revoke or suspend a license without first giving the licensee a hearing or an opportunity to be heard on the question of whether there are sufficient grounds under this chapter upon which to base the revocation or suspension; or

(2) Impose a civil penalty pursuant to §§ 23-112-314 and 23-112-1020 without first giving the respondent a hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 1999, No. 1042, § 10; 2009, No. 756, § 18; 2013, No. 1043, § 9.

Publisher's Notes. For text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2009 amendment rewrote and redesignated the section.

The 2013 amendment inserted "and 23-112-1020" in (b)(2).

Effective Dates. Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-503. Notice — Location of hearing.

(a) When a hearing is to be held before the Arkansas Motor Vehicle Commission, the commission shall give written notice to all parties whose rights may be affected thereby.

(b) The notice shall set forth the reason for the hearing, the questions or issues to be decided by the commission at the hearing, and the time and the place of the hearing.

(c) All notices shall be mailed to all parties whose rights may be affected by the hearing by registered or certified mail and addressed to their last known address.

(d) Any hearing shall be held in the county where the principal office of the commission is located unless both parties agree to an alternate location.

History. Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 2009, No. 756, § 19.

Amendments. The 2009 amendment rewrote (d).

23-112-509. Summons, citation, and subpoena.

(a) It shall be the duty of the sheriffs and constables of the counties of this state and of any employee of the Arkansas Motor Vehicle Commission, when so directed by the commission, to execute any summons, citation, or subpoena that the commission may cause to be issued and to make their return thereof to the commission.

(b)(1) The sheriffs and constables serving and returning any summons, citation, or subpoena shall be paid the same fees as provided for the services in the circuit court.

(2) Any person other than an employee of the commission who appears before the commission in response to a summons, citation, or subpoena shall be paid the same witness fee and mileage allowance as witnesses in the circuit court.

(c)(1) In case of failure or refusal on the part of any person to comply with any summons, citation, or subpoena issued and served as authorized, or in the case of the refusal of any person to testify or answer to any matter regarding that which he or she may be lawfully interrogated, or the refusal of any person to produce his or her record books and accounts relating to any matter regarding that which he or she may be lawfully interrogated, the circuit court of any county of the State of

Arkansas, on application of the commission or of the Executive Director of the Arkansas Motor Vehicle Commission, may:

(A) Issue an attachment for the person; and

(B) Compel the person to:

(i) Comply with the summons, citation, or subpoena;

(ii) Attend before the commission or its designated employee;

(iii) Produce the documents specified in any subpoena duces tecum; and

(iv) Give his or her testimony upon such matters as he or she may be lawfully required.

(2) Any circuit court shall have the power to punish for contempt as in the case of disobedience of like process issued from or by any circuit court, or by refusal to testify therein in response to the process, and the person shall be taxed with the costs of the proceedings.

History. Acts 1975, No. 388, § 7; A.S.A. § 18; 2003, No. 1185, § 265; 2005, No. 1947, § 75-2307; Acts 2001, No. 1053, 1845, § 4.

SUBCHAPTER 6 — USED MOTOR VEHICLE BUYERS PROTECTION

SECTION.

23-112-602. Definitions.

23-112-603. Penalty for violation and disbursement of fines.

23-112-604. Powers generally.

23-112-607. Dealer license.

23-112-608. License certificate fees.

23-112-611. Records to be maintained.

23-112-612. [Repealed.]

SECTION.

23-112-613. Delivery prior to sale — Disclosures.

23-112-614. Auto auction fees for salvage-titled or parts-only titled vehicles.

23-112-615, 23-112-616. [Repealed.]

23-112-617. Used motor vehicle dealer service and handling fee.

Effective Dates. Acts 2007, No. 366, § 5: Mar. 19, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that currently a lawsuit is challenging the charging of documentary fees motor vehicle dealers as part of the sale of a motor vehicle; that the circuit court has found that the documentary fee which is a fee charged for the preparation of documents by the motor vehicle dealer is the unauthorized practice of law; and that this act is immediately necessary to prevent the ongoing problem and to prohibit

motor vehicle dealers from charging documentary fees. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-112-602. Definitions.

As used in this subchapter:

(1)(A) "Auto auction" means any person who operates or provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers, or from used motor vehicle dealers to individuals, or individuals to used motor vehicle dealers, or any combination thereof, or any motor vehicle dealer licensed to sell used motor vehicles, selling used motor vehicles using an auction format or on consignment.

(B) "Auto auction" also applies to any person who provides the facilities for or is in the business of selling motor vehicles in an auction format;

(2) "Designee" means a person or entity that:

(A) Agrees to perform inspections of used motor vehicle dealers under this subchapter on behalf of the department; and

(B) The department determines is appropriately suited for serving as a designee under this subchapter;

(3) "Drafter" means any person who obtains financing for the purchase and resale of vehicles of another person or a used motor vehicle dealer through the use of the account of or based on the extension of credit by presenting at the time of purchase of the subject vehicles a documentary draft for purchase of the vehicle or who otherwise promises to pay through the accounts or credit of another person or a used motor vehicle dealer;

(4) "Licensed location" means the address designated as the business address of the used motor vehicle dealer on his or her application for a used motor vehicle dealer's license;

(5) "Motor vehicle" means any motor-driven vehicle having two (2) or more wheels of the sort and kind required to have an Arkansas motor vehicle license, certificate, or permit for operation in the State of Arkansas;

(6) "Off-premises" means a location other than the address designated as the licensed address;

(7) "Person" means and includes, individually and collectively, individuals, firms, partnerships, associations, corporations, trusts, or any other form of business, individual enterprise, or entity;

(8) "Sale" or "sell" means the actual sale of a motor vehicle, the attempted sale, or the offering or advertising of a motor vehicle for sale;

(9) [Repealed.]

(10)(A) "Used motor vehicle" means any motor vehicle which has previously been sold, bargained, exchanged, given away, or the title thereto transferred from the person or corporation who first took title from the manufacturer, importer, dealer, or agent of the manufacturer or importer, or that is so used as to have become what is commonly known as a secondhand or previously owned motor vehicle.

(B) In the event of a transfer reflected on the statement of origin from the original franchise dealer to any other dealer, individual, or corporation other than a franchise dealer of the same make of vehicle, the vehicle shall be considered a used motor vehicle;

(11)(A)(i) "Used motor vehicle dealer", hereinafter referred to as "dealer", means any person, wholesaler, or auto auction who, for a

commission or with intent to make a profit or gain of money or other thing of value, sells, brokers, exchanges, rents, or leases with the option to purchase or own, or attempts to negotiate a sale or exchange of an interest in any used motor vehicle, or who is wholly or in part in the business of buying, selling, trading, or exchanging used motor vehicles, whether or not such motor vehicles are owned by the person.

(ii) The sale or attempted sale of five (5) or more used motor vehicles in any one (1) calendar year shall be prima facie evidence and shall constitute a rebuttable presumption that a person is engaged in the business of selling used motor vehicles.

(B) "Used motor vehicle dealer" shall not include:

(i) A receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to a judgment or order of any court;

(ii) A public officer, while performing his or her official duties;

(iii) A mortgagee or secured party as to sales of motor vehicles constituting collateral on a mortgage or security agreement, if the mortgagee or secured leasing party shall not realize for their own account from such sales any moneys in excess of the outstanding balance secured by the mortgage or security agreement after consideration of the costs of collection;

(iv) A lienholder, artisan, mechanic, or garage selling repaired items pursuant to a lien granted by Arkansas law;

(v) A person selling a motor vehicle titled in his or her own name and used exclusively as a personal vehicle, or a motor vehicle titled in a business name and used exclusively as a business vehicle, or a person engaged in leasing or renting vehicles; or

(vi) A new motor vehicle dealer selling a used motor vehicle in conjunction with his or her new motor vehicle dealer operations who is licensed under this chapter;

(12) "Used motor vehicle salesperson", hereinafter referred to as "salesperson", is anyone who for compensation of any kind operates as a salesperson, broker, agent, or representative of a used motor vehicle dealer, or any person who attempts to or in fact negotiates a sale of a vehicle owned partially or entirely by a used motor vehicle dealer, or a person or drafter using the financial resources, line of credit, or floor plan of a used motor vehicle dealer to purchase, sell, or exchange an interest in a used motor vehicle; and

(13)(A) "Wholesaler" means any person, resident or nonresident, who, in whole or in part, primarily sells used motor vehicles to motor vehicle dealers.

(B) Used motor vehicle dealers who, incidental to their primary business, sell motor vehicles to other dealers are not considered wholesalers because of their incidental sales.

History. Acts 1993, No. 490, § 2; 1995, No. 357, § 1; 2005, No. 1416, §§ 1, 2; 2005, No. 1780, § 1; 2011, No. 265, § 1. **Amendments.** The 2011 amendment repealed (9).

23-112-603. Penalty for violation and disbursal of fines.

(a) In addition to any other penalty prescribed by existing laws, the penalties for violation of this subchapter and the disbursement of fines shall be as follows:

(1) A first violation of this subchapter by any person shall constitute a Class A misdemeanor;

(2) A second violation of this subchapter by any person shall constitute a Class D felony; and

(3) Conviction of a third or subsequent violation shall constitute a Class D felony, and the dealer's license shall be suspended for three (3) years for each respective third or subsequent violation.

(b) Any person found guilty of selling a used motor vehicle as a dealer or salesperson while his or her used motor vehicle dealer's or salesperson's license is suspended or revoked shall be guilty of a Class C felony.

(c)(1) If the arresting officer is an officer of the Department of Arkansas State Police, one-half ($\frac{1}{2}$) of the fine collected shall be remitted by the tenth day of each month to the Administration of Justice Funds Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office, for deposit into the Department of Arkansas State Police Fund to be used for the purchase and maintenance of state police vehicles.

(2) If the arresting officer is a county law enforcement officer, one-half ($\frac{1}{2}$) of the fine collected shall be deposited into that county fund used for the purchase and maintenance of rescue, emergency medical, and law enforcement vehicles, communications equipment, animals owned or used by law enforcement agencies, life-saving medical apparatus, and law enforcement apparatus to be used for those purposes.

(3) If the arresting officer is a municipal law enforcement officer, one-half ($\frac{1}{2}$) of the fine collected shall be deposited into that municipal fund used for the purchase and maintenance of rescue, emergency medical, and law enforcement vehicles, communications equipment, animals owned or used by law enforcement agencies, life-saving medical apparatus, and law enforcement apparatus to be used for those purposes.

(d)(1) A used motor vehicle dealer licensed under this subchapter shall maintain a licensed location.

(2) When a used motor vehicle dealer changes or moves his or her licensed location, within fifteen (15) calendar days of the relocation, the used motor vehicle dealer shall notify the department in writing of the dealership name, the previous location, and the new location.

(3)(A) If the department determines that the used motor vehicle dealer's business location has moved and notification to the department has not been properly made, the department shall levy a fine equal to the amount of the license fee.

(B) The fine collected pursuant to subdivision (d)(3)(A) of this section shall be remitted to the department and shall be deposited into the State Treasury as special revenue to the credit of the department.

History. Acts 1993, No. 490, § 12;
2001, No. 1408, § 1; 2003, No. 1765, § 30;
2005, No. 1416, § 3.

23-112-604. Powers generally.

(a) The Department of Arkansas State Police may promulgate rules that are necessary to implement, enforce, and administer this subchapter.

(b) The department may cancel a dealer's license if the dealer:

(1) Fails to keep and maintain the requirements of § 23-112-607(a) and (c); or

(2) Pleads guilty or nolo contendere to or has been found guilty of a violation of § 23-112-605.

History. Acts 1993, No. 490, § 13; 2011, No. 201, § 1. for "shall have the power to promulgate such rules and regulations as" in (a); and

Amendments. The 2011 amendment rewrote (b). substituted "may promulgate rules that"

23-112-607. Dealer license.

(a)(1) Persons wishing to obtain a used motor vehicle dealer's license shall submit a fully executed application on such used motor vehicle dealer application forms as may be prescribed by the Department of Arkansas State Police.

(2) The application shall be verified by the oath or affirmation of the applicant.

(b) An applicant for a used motor vehicle dealer license or a licensee seeking to renew a used motor vehicle dealer license shall establish that he or she has sold at least five (5) used motor vehicles during the previous calendar year.

(c) The department shall require in relation to the application the following information and verification prior to issuing a license certificate:

(1) A photograph of the business location;

(2) A corporate surety bond in the sum of at least twenty-five thousand dollars (\$25,000);

(3) Proof of liability insurance coverage on all vehicles to be offered for sale in an amount equal to or greater than the amount required by the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq.;

(4) A list of the persons or entities having any ownership interest in the used vehicle dealership;

(5) A list of salespersons to be employed;

(6) That the applicant has a bona fide established place of business used primarily for the sale of used motor vehicles;

(7) That the applicant has a telephone number listed in the name of the business;

(8) That the applicant has a sign identifying the establishment as a used motor vehicle dealership legible from the street, road, or highway, and a picture thereof;

(9) That the applicant has a filing cabinet or other repository adequate to secure the business records of the establishment under lock and key or combination;

(10) Whether the applicant has ever been issued a motor vehicle dealer's license, and if the applicant has ever had a motor vehicle dealer's license suspended or revoked;

(11)(A) Except as provided in subdivision (c)(11)(B) of this section, an affidavit from a department officer or a designee of the department stating that the officer or a designee of the department has inspected the facility within thirty (30) days before issuance or renewal of a license and found it to be in compliance with the requirements for application.

(B) If a licensee has been continuously licensed at the same facility for ten (10) years or more, then the licensee shall only be required to comply with subdivision (c)(11)(A) of this section one (1) time every other year; and

(12) The name, address, and telephone number of the person designated to receive legal process in the event of the commencement of any legal action in any court against the applicant.

(d)(1)(A) Each applicant shall obtain a corporate surety bond in the penal sum of twenty-five thousand dollars (\$25,000) on a bond form approved by the state.

(B) However, an applicant for a license at multiple locations may provide a corporate surety bond in the penal sum of one hundred thousand dollars (\$100,000) covering all licensed locations in lieu of separate bonds for each individual location.

(2) The bond shall be an indemnity for any loss and reasonable attorney's fees sustained by a retail buyer by reason of the acts of the person bonded when such an act constitutes a violation of this law.

(3) However, the surety shall in no event be liable for more than twenty-five thousand dollars (\$25,000).

(4) The bond shall be executed in the name of the State of Arkansas or any aggrieved party.

(5) The proceeds of the bonds shall be paid either to the State of Arkansas or to the retail buyer upon a judgment from an Arkansas court of competent jurisdiction against the principal and in favor of the aggrieved party or the State of Arkansas.

(6) However, the surety shall in no event be required to pay any judgment obtained by fraud or collusion, as between the dealer and the retail buyer, or which was rendered against a person bonded for an act that does not constitute a violation of this subchapter. These defenses may be raised at any time, subject to the applicable statute of limitations.

History. Acts 1993, No. 490, §§ 4, 6;
1997, No. 705, § 1; 1999, No. 1040, § 1;
2001, No. 93, § 1; 2005, No. 1416, § 4.

23-112-608. License certificate fees.

(a)(1) The fee for a license certificate shall be two hundred fifty dollars (\$250) per year for each used motor vehicle dealer licensed.

(2)(A) The fee shall be for the licensing period beginning on January 1 of each year and ending on December 31 of each year and shall be renewable during the month of January following its expiration, unless the Department of Arkansas State Police provides by rule a staggered method of annual renewal.

(B)(i) If a license certificate has been expired for at least thirty-one (31) days but less than six (6) months, then the used motor vehicle dealer shall remit a late fee of thirty-five dollars (\$35.00) before the used motor vehicle dealer's application shall be accepted.

(ii)(a) A license that is not renewed within six (6) months of its expiration date shall be deemed permanently expired.

(b) If a used motor vehicle dealer license has permanently expired, then the used motor vehicle dealer may reapply for licensure, provided that the used motor vehicle dealer completes an application for licensure and remits all fees pursuant to this section.

(3) A dealer having more than one (1) location will receive an additional certificate for each second and subsequent location for one hundred twenty-five dollars (\$125) each.

(b) Only used motor vehicle dealers licensed under this section shall qualify for used motor vehicle dealer license plates from the Department of Finance and Administration.

(c) All fees for the issuance of a license certificate under the provisions of this section shall be remitted to the Department of Arkansas State Police and shall be deposited into the State Treasury as special revenues to the credit of the Department of Arkansas State Police Fund.

History. Acts 1993, No. 490, § 5; 2005, No. 1416, § 5.

23-112-611. Records to be maintained.

(a) Every person required to have a license shall maintain, for three (3) years from the date of purchase, records of each vehicle transaction to which the person was a party.

(b) Dealers shall maintain copies of all documents executed in conjunction with any transaction, which may include bills of sale, titles, odometer statements, invoices, affidavits of alteration, and reassignments, and shall be open to inspection to any Department of Arkansas State Police officer or designated employee of the department acting in an official capacity during reasonable business hours.

History. Acts 1993, No. 490, § 10; inserted "or designated employee of the 1995, No. 357, § 4; 2011, No. 201, § 2. department" in (b).

Amendments. The 2011 amendment

23-112-612. [Repealed.]

Publisher's Notes. This section, concerning used motor vehicle dealer documentary fees; disclosures, was repealed by

Acts 2007, No. 366, § 4. The section was derived from Acts 2001, No. 1600, § 2.

23-112-613. Delivery prior to sale — Disclosures.

(a) As used in this section:

(1)(A) "Contract for sale" means the final agreement between a used motor vehicle dealer and a consumer that:

(i) Includes all material terms of the sale of a motor vehicle; and

(ii) Is binding upon the seller, the buyer, and any necessary third-party financier.

(B) "Contract for sale" includes a financing agreement and all material financing terms if the motor vehicle is to be financed; and

(2) "Delivery prior to sale" means a delivery of a motor vehicle by a used motor vehicle dealer to a consumer prior to the completion and execution by both parties of a contract for sale.

(b) If a used motor vehicle dealer engages in a delivery prior to sale, then the used motor vehicle dealer shall provide the consumer with an agreement for delivery prior to sale at the time of delivery of the motor vehicle to the consumer.

(c)(1) The agreement for delivery prior to sale shall be:

(A) Printed in at least 12-point type; and

(B) Signed by the consumer and the used motor vehicle dealer or the dealer's representative.

(2) The agreement for delivery prior to sale shall not be considered a contract for sale.

(d) The agreement for delivery prior to sale shall include all of the following terms:

(1) Unless the consumer is approved for financing and both parties have executed a contract for sale, then the used motor vehicle dealer shall not:

(A) Deposit or cash any down payment provided by the consumer; and

(B) Sell any motor vehicle that is presented by the consumer as a trade-in;

(2) The consumer retains the right to cancel the purchase of a motor vehicle if:

(A) The used motor vehicle dealer changes any terms; or

(B) The consumer fails to obtain financing that meets the agreed-upon interest rate;

(3) If a consumer who executes an agreement for delivery prior to sale chooses not to execute a contract for sale or otherwise cancels the purchase as provided under this section, then:

(A) The used motor vehicle dealer shall not:

(i) Impose any charge or penalty against the consumer; or

(ii) Deposit or cash any down payment provided by the consumer; and

(B) The used motor vehicle dealer shall immediately return any motor vehicle that was presented by the consumer as a trade-in; and
(4) If the consumer decides to not purchase the motor vehicle, the consumer shall return the motor vehicle to the used motor vehicle dealer within forty-eight (48) hours after the consumer notifies the dealer.

(e) If a consumer fails to return a motor vehicle pursuant to subdivision (d)(4) of this section, then the used motor vehicle dealer may recover the vehicle without the necessity of judicial process if the recovery is possible without committing an act of breaking or entering or breach of the peace.

(f) The Department of Arkansas State Police shall promulgate rules and regulations to implement, enforce, and administer this section.

History. Acts 2005, No. 1687, § 2.

23-112-614. Auto auction fees for salvage-titled or parts-only titled vehicles.

(a) A five-dollar (\$5.00) fee shall be charged to the buyer of each item at an auto auction that is sold on a certificate of title that is labeled “salvage” or “parts-only”.

(b) The fee is special revenue and shall be deposited into the State Treasury.

(c) The Treasurer of State shall transfer the special revenues received under this section on the last business day of each month as follows:

(1) Fifty percent (50%) for the Arkansas Department of Environmental Quality to be used for inspection and oversight of auto auctions to enforce all laws and rules administered by the Arkansas Department of Environmental Quality; and

(2) Fifty percent (50%) for the Department of Arkansas State Police to be used for inspection and oversight of auto auctions.

History. Acts 2005, No. 1780, § 2; the remaining text, and made related changes.
2007, No. 827, § 191; 2009, No. 639, § 1;
2011, No. 265, § 2.

Amendments. The 2009 amendment, The 2011 amendment rewrote the section.
in (b)(5), inserted (b)(5)(A), redesignated

23-112-615, 23-112-616. [Repealed.]

Publisher’s Notes. These sections, concerning prohibition and dealers from other states, were repealed by Acts 2011, No. 265, § 3. They were derived from the following source:

23-112-615. Acts 2005, No. 1780, § 2.

23-112-616. Acts 2005, No. 1780, § 2.

23-112-617. Used motor vehicle dealer service and handling fee.

(a) A used motor vehicle dealer may fill in the blanks on standardized forms in connection with the sale or lease of used motor vehicles if the motor vehicle dealer does not charge for the service of filling in the blanks or otherwise charge for preparing documents.

(b)(1) A used motor vehicle dealer may charge a service and handling fee in connection with the sale or lease of a used motor vehicle for:

(A) The handling, processing, and storage of documents; and

(B) Other administrative and clerical services.

(2)(A) The service and handling fee may be charged to allow cost recovery for used motor vehicle dealers.

(B) A portion of the service and handling fee may result in profit to the used motor vehicle dealer.

(c)(1) The Department of Arkansas State Police shall determine by rule the amount of the service and handling fee that may be charged by a used motor vehicle dealer. The service and handling fee shall be no less than zero dollars (\$0.00) and no more than one hundred twenty-nine dollars (\$129).

(2) If a service and handling fee is charged under this section, the service and handling fee shall be:

(A) Charged to all retail customers; and

(B) Disclosed on the retail buyer's order form as a separate itemized charge.

(d) A preliminary work sheet on which a sale price is computed and that is shown to the purchaser, a retail buyer's order form from the purchaser, or a retail installment contract shall include in reasonable proximity to the place on the document where the service and handling fee authorized by this section is disclosed:

(1) The amount of the service and handling fee; and

(2) The following notice in type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material:

"A SERVICE AND HANDLING FEE IS NOT AN OFFICIAL FEE. A SERVICE AND HANDLING FEE IS NOT REQUIRED BY LAW BUT MAY BE CHARGED TO THE CUSTOMER FOR PERFORMING SERVICES AND HANDLING DOCUMENTS RELATING TO THE CLOSING OF A SALE OR LEASE. THE SERVICE AND HANDLING FEE MAY RESULT IN PROFIT TO THE DEALER. THE SERVICE AND HANDLING FEE DOES NOT INCLUDE PAYMENT FOR THE PREPARATION OF LEGAL DOCUMENTS. THIS NOTICE IS REQUIRED BY LAW."

(e) The Department of Arkansas State Police may promulgate rules to implement, enforce, and administer this section.

History. Acts 2007, No. 366, § 2.

SUBCHAPTER 8 — SPECIAL MOTORCYCLE EVENTS

SECTION.

- 23-112-801. Findings.
23-112-802. Definitions.
23-112-803. Statements of estimated positive economic impact.
23-112-804. Significant positive economic impact determinations.

SECTION.

- 23-112-805. Authority to waive relevant market area and rules.
23-112-806. Established and ongoing special motorcycle events.

23-112-801. Findings.

The General Assembly finds that:

- (1) A special motorcycle event sponsored by a city, county, nonprofit entity, or motorcycle owners' organization draws people from all over the state, other states, and even other countries;
- (2) A special motorcycle event can provide a valuable increase in tourism for the state; and
- (3) The laws and rules related to the display and sale of motorcycles at a special motorcycle event must be modified to lessen the restrictions that are hampering economic growth.

History. Acts 2007, No. 235, § 1.

23-112-802. Definitions.

As used in this subchapter:

- (1) "Motorcycle owners' organization" means an entity that is organized as a nonprofit entity or for-profit entity and in good standing with the Secretary of State;
- (2) "Nonprofit entity" means an entity that has received tax exempt status from the Internal Revenue Service pursuant to section 501(c)(3) or section (501)(c)(4) of the Internal Revenue Code of 1986, as it existed on January 1, 2007;
- (3) "Public venue" means a location that:
 - (A) Is open to the general public; and
 - (B) Is not the address designated as the primary business address of a new motor vehicle dealer licensed by the Arkansas Motor Vehicle Commission or a used motor vehicle dealer licensed by the Department of Arkansas State Police;
- (4) "Significant positive economic impact" means an economic benefit of at least three million dollars (\$3,000,000) to the state or a region of the state; and
- (5) "Special motorcycle event" means an event held at a public venue with or without an admission fee that:
 - (A) Is sponsored by a city, a county, a nonprofit entity, or a motorcycle owners' organization;
 - (B) Occurs not more than one (1) time each year for no more than seven (7) consecutive days; and
 - (C) Includes any of the following that are invited to attend:
 - (i) New motor vehicle dealers to display and sell motorcycles; or

(ii) New motor vehicle manufacturers or distributors to display motorcycles.

History. Acts 2007, No. 235, § 1.

23-112-803. Statements of estimated positive economic impact.

A statement of the estimated positive economic impact of a proposed special motorcycle event shall be submitted to the Arkansas Motor Vehicle Commission from an independent source such as a university, chamber of commerce, or other entity that regularly engages in the estimation of the economic benefit of an occurrence for businesses and industries.

History. Acts 2007, No. 235, § 1.

23-112-804. Significant positive economic impact determinations.

(a) If the statement of estimated positive economic impact that is submitted to the Arkansas Motor Vehicle Commission establishes that a special motorcycle event has a significant positive economic impact, the special motorcycle event is exempt from regulation by the commission as provided under § 23-112-805.

(b) If the statement of estimated positive economic impact that is presented to the commission establishes that a special motorcycle event will not have a significant positive economic impact, then the commission shall determine whether the special motorcycle event is exempt from the provisions of this chapter and any rules promulgated by the commission.

History. Acts 2007, No. 235, § 1.

23-112-805. Authority to waive relevant market area and rules.

(a) The Arkansas Motor Vehicle Commission shall waive the following for a special motorcycle event that has a significant positive economic impact or is determined by the commission to otherwise qualify for an exemption under § 23-112-804(b) if no franchised motor vehicle dealer of a licensed manufacturer is represented in the host county of the special motorcycle event or the counties contiguous to the host county:

(1) The provisions of this chapter regarding relevant market area; and

(2) The rules regarding motor vehicle dealers in contiguous counties.

(b)(1) The commission may promulgate rules for the issuance of a temporary permit to out-of-state motor vehicle dealers and manufacturers to participate in a special motorcycle event under this subchapter.

(2) No rule shall be promulgated that puts a greater burden on out-of-state motor vehicle dealers and manufacturers to obtain a

temporary permit than the requirements necessary for a motor vehicle dealer or manufacturer to obtain a license from the commission.

(3) If the commission establishes fees for a temporary permit under this subsection, the fees shall not exceed:

(A) For an out-of-state motor vehicle dealer, one hundred dollars (\$100);

(B) For a manufacturer or distributor, two hundred fifty dollars (\$250);

(C) For an out-of-state salesperson, fifteen dollars (\$15.00); and

(D) For a factory representative or distributor representative, fifty dollars (\$50.00).

History. Acts 2007, No. 235, § 1.

23-112-806. Established and ongoing special motorcycle events.

(a) A special motorcycle event that has been ongoing for five (5) years or more before July 31, 2007, and has had a significant positive economic impact in the past shall be:

(1) Considered an established and ongoing special motorcycle event; and

(2) Eligible to a presumption of a significant positive economic impact by the Arkansas Motor Vehicle Commission.

(b) Notwithstanding any provision of law to the contrary, an established and ongoing special motorcycle event under this section may continue to invite motor vehicle dealers and manufacturers that have participated in the special motorcycle event for the previous three (3) years.

History. Acts 2007, No. 235, § 1.

SUBCHAPTER 9 — RECREATIONAL VEHICLE SPECIAL EVENTS

SECTION.

23-112-901. Findings.

23-112-902. Definitions.

23-112-903. Statements of estimated positive economic impact.

SECTION.

23-112-904. Significant positive economic impact determinations.

23-112-905. Authority to waive relevant market area and rules.

23-112-901. Findings.

The General Assembly finds that:

(1) A recreational vehicle special event sponsored by a city, county, nonprofit entity, or recreational vehicle owners' organization draws people from all over the state and other states;

(2) A recreational vehicle special event can provide a valuable increase in tourism for the state; and

(3) The laws and rules related to the display and sale of recreational vehicles at a recreational vehicle special event must be modified to lessen the restrictions that are hampering economic growth.

History. Acts 2011, No. 263, § 1.

23-112-902. Definitions.

As used in this subchapter:

(1) "Nonprofit entity" means an entity that has received tax exempt status from the Internal Revenue Service under section 501(c)(3) or section (501)(c)(4) of the Internal Revenue Code of 1986, as it existed on January 1, 2011;

(2) "Public venue" means a location that:

(A) Is open to the general public; and

(B) Is not the address designated as the primary business address of a new motor vehicle dealer licensed by the Arkansas Motor Vehicle Commission or a used motor vehicle dealer licensed by the Department of Arkansas State Police;

(3) "Recreational vehicle owners' organization" means an entity that is organized as a nonprofit entity or for-profit entity and in good standing with the Secretary of State;

(4) "Recreational vehicle special event" means an event held at a public venue with or without an admission fee that:

(A) Is sponsored by a city, a county, a nonprofit entity, or a recreational vehicle owners' organization;

(B) Occurs for no more than seven (7) consecutive days; and

(C) Includes any of the following that are invited to attend:

(i) New recreational vehicle dealers to display and sell recreational vehicles; or

(ii) New recreational vehicle manufacturers or distributors to display recreational vehicles; and

(5) "Significant positive economic impact" means an economic benefit of at least two million dollars (\$2,000,000) to the state or a region of the state.

History. Acts 2011, No. 263, § 1.

23-112-903. Statements of estimated positive economic impact.

A statement of the estimated positive economic impact of a proposed recreational vehicle special event shall be submitted to the Arkansas Motor Vehicle Commission from an independent source such as a university, chamber of commerce, or other entity that regularly engages in the estimation of the economic benefit of an occurrence for businesses and industries.

History. Acts 2011, No. 263, § 1.

23-112-904. Significant positive economic impact determinations.

(a) If the statement of estimated positive economic impact that is submitted to the Arkansas Motor Vehicle Commission establishes that

a recreational vehicle special event has a significant positive economic impact, the recreational vehicle special event is exempt from regulation by the commission as provided under § 23-112-905.

(b) If the statement of estimated positive economic impact that is presented to the commission establishes that a recreational vehicle special event will not have a significant positive economic impact, then the commission shall determine whether the recreational vehicle special event is exempt from this chapter and any rules promulgated by the commission.

History. Acts 2011, No. 263, § 1.

23-112-905. Authority to waive relevant market area and rules.

(a) The Arkansas Motor Vehicle Commission shall waive the following for a recreational vehicle special event that has a significant positive economic impact or is determined by the commission to otherwise qualify for an exemption under § 23-112-904(b) if no franchised motor vehicle dealer of a licensed manufacturer is represented in the host county of the recreational vehicle special event or the counties contiguous to the host county:

(1) The provisions of this chapter regarding relevant market area; and

(2) The rules regarding motor vehicle dealers in contiguous counties.

(b)(1) The commission may promulgate rules for the issuance of a temporary permit to out-of-state motor vehicle dealers and manufacturers to participate in a recreational vehicle special event under this subchapter.

(2) The commission shall not promulgate a rule that puts a greater burden on out-of-state motor vehicle dealers and manufacturers to obtain a temporary permit than the requirements necessary for a motor vehicle dealer or manufacturer to obtain a license from the commission.

(3) If the commission establishes fees for a temporary permit under this subsection, the fees shall not exceed:

(A) For an out-of-state motor vehicle dealer, one hundred dollars (\$100);

(B) For a manufacturer or distributor, two hundred fifty dollars (\$250);

(C) For an out-of-state salesperson, fifteen dollars (\$15.00); and

(D) For a factory representative or distributor representative, fifty dollars (\$50.00).

History. Acts 2011, No. 263, § 1.

SUBCHAPTER 10 — RECREATIONAL VEHICLE FRANCHISE ACT [EFFECTIVE JANUARY 1, 2014]

SECTION.

23-112-1001. Title. [Effective January 1, 2014.]

SECTION.

23-112-1002. Legislative findings. [Effective January 1, 2014.]

SECTION.

- 23-112-1003. Definitions. [Effective January 1, 2014.]
- 23-112-1004. License requirements and application fees. [Effective January 1, 2014.]
- 23-112-1005. Application for license. [Effective January 1, 2014.]
- 23-112-1006. Issuance of license — Change of location — Change of business or corporate name, structure, or DBA name — Dealers, manufacturers, and distributors. [Effective January 1, 2014.]
- 23-112-1007. Display of license — Change of employer — Factory representative and distributor representative. [Effective January 1, 2014.]
- 23-112-1008. Display of license — Change of employer — Salesperson. [Effective January 1, 2014.]
- 23-112-1009. Expiration of license. [Effective January 1, 2014.]
- 23-112-1010. Area of sales responsibility. [Effective January 1, 2014.]
- 23-112-1011. Renewal of a dealer agreement. [Effective January 1, 2014.]
- 23-112-1012. Termination, cancellation, or nonrenewal of dealer agreement. [Effective January 1, 2014.]

SECTION.

- 23-112-1013. Repurchase of inventory. [Effective January 1, 2014.]
- 23-112-1014. Sale of remaining inventory after termination. [Effective January 1, 2014.]
- 23-112-1015. Change of ownership of dealer — Family succession. [Effective January 1, 2014.]
- 23-112-1016. Warranty obligation. [Effective January 1, 2014.]
- 23-112-1017. Damage to recreational vehicles before arrival at dealership. [Effective January 1, 2014.]
- 23-112-1018. Prohibited activity of a manufacturer or distributor — Coercion. [Effective January 1, 2014.]
- 23-112-1019. License — Denial, revocation, and suspension. [Effective January 1, 2014.]
- 23-112-1020. Monetary penalty in lieu of suspension or revocation of license — Civil penalty. [Effective January 1, 2014.]
- 23-112-1021. Enforcement. [Effective January 1, 2014.]
- 23-112-1022. Civil action and mediation. [Effective January 1, 2014.]
- 23-112-1023. Injunction. [Effective January 1, 2014.]

Effective Dates. Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-1001. Title. [Effective January 1, 2014.]

This subchapter shall be known and may be cited as the “Recreational Vehicle Franchise Act”.

History. Acts 2013, No. 1043, § 10.

23-112-1002. Legislative findings. [Effective January 1, 2014.]

The General Assembly finds that:

(1) The distribution and sale of recreational vehicles vitally affects the general economy, the public interest, and the public welfare; and

(2) It is necessary, in the exercise of the General Assembly's police power, to regulate and to license recreational vehicle manufacturers, factory branches and divisions, distributors, distributor branches and divisions, distributor representatives, dealers, and salespersons doing business in Arkansas to:

(A) Prevent fraud, unfair practices, discrimination, impositions, and other abuses upon the citizens of Arkansas;

(B) Foster and keep alive vigorous and healthy competition;

(C) Prevent the creation or perpetuation of monopolies;

(D) Prevent the practice of requiring the buying of special features, accessories, special models, appliances, and equipment not desired by a recreational vehicle dealer or the ultimate purchaser;

(E) Prevent false and misleading advertising;

(F) Promote and keep alive a sound system of distribution of recreational vehicles to the public; and

(G) Promote the public safety and welfare.

History. Acts 2013, No. 1043, § 10.

23-112-1003. Definitions. [Effective January 1, 2014.]

As used in this subchapter:

(1) "Area of sales responsibility" means the geographical area agreed to by the dealer and the manufacturer or distributor in a dealer agreement where the dealer has the exclusive right to display or sell the manufacturer or distributor's new recreational vehicles of a particular line-make to the retail public;

(2) "Dealer" means a person, firm, corporation, or business entity that is:

(A) Engaged in the business of selling or offering to sell, selling and servicing, soliciting, or advertising the selling or selling and servicing of recreational vehicles under a manufacturer's warranty; and

(B) Located at an established and permanent place of business under a dealer agreement;

(3) "Dealer agreement" means a written agreement, contract, franchise agreement, or sales and service agreement that:

(A) Is entered into between a manufacturer or distributor and a dealer;

(B) Establishes the rights, responsibilities, and obligations of the manufacturer or distributor and a dealer; and

(C) Authorizes the dealer to sell new recreational vehicles;

(4) "Distributor" means a person, firm, corporation, or business entity that purchases new recreational vehicles for resale to dealers;

(5) "Factory campaign" means an effort on the part of a warrantor to contact recreational vehicle owners or dealers to address a part or equipment issue;

(6) "Factory representative" means a representative employed by a person, firm, association, corporation, or trust that manufactures, assembles, or distributes new recreational vehicles;

(7) "Family member" means:

(A) A spouse;

(B) A child, grandchild, parent, sibling, niece, or nephew; or

(C) The spouse of a child, grandchild, parent, sibling, niece, or nephew;

(8) "Fifth wheel travel trailer" means a recreational vehicle designed to be towed by a motorized vehicle by means of a towing mechanism that is mounted above or forward of the tow vehicle's rear axle;

(9) "Folding camping trailer" means a recreational vehicle designed to be towed by a motorized vehicle that is constructed with partially collapsible side walls that fold for travel and unfold and extend in the set-up mode;

(10) "Line-make" means a specific series of recreational vehicle products that:

(A) Are identified by a common series trade name or trademark;

(B) Are targeted to a particular market segment, as determined by their decor, features, equipment, size, weight, and price range;

(C) Have lengths and interior floor plans that distinguish the recreational vehicles from other recreational vehicles with substantially the same decor, equipment, features, price, and weight;

(D) Belong to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body; and

(E) The dealer agreement authorizes a dealer to sell;

(11) "Manufacturer" means a person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicles;

(12) "Motor home" means a recreational vehicle built on a self-propelled motor vehicle chassis that contains at least four (4) of the following permanently installed independent life support systems:

(A) A cooking facility with an on-board fuel source;

(B) A potable water supply system that includes at least a sink, faucet, and water tank with an exterior service supply connection;

(C) A toilet with exterior evacuation;

(D) A gas or electric refrigerator;

(E) A heating or air conditioning system with an on-board power or fuel source separate from the vehicle engine; or

(F) An electric power supply of one hundred ten to one hundred twenty-five volts (110-125 V);

(13) "Person" means, individually and collectively, individuals, firms, partnerships, copartnerships, associations, corporations, trusts, or any other form of business enterprise or other legal entity;

(14) "Proprietary part" means a recreational vehicle part:

- (A) Manufactured by or for a manufacturer; and
- (B) Sold exclusively by the manufacturer;
- (15) "Recreational vehicle":
 - (A) Means a vehicle that:
 - (i) Has its own motor power or is towed by another vehicle;
 - (ii) Is primarily designed as a temporary living quarters for noncommercial recreation or camping use;
 - (iii) Complies with all applicable federal vehicle regulations as existing on January 1, 2013; and
 - (iv) Does not require a special-movement permit to legally use the highways; and
 - (B) Includes without limitation a:
 - (i) Motor home;
 - (ii) Travel trailer;
 - (iii) Fifth wheel travel trailer; and
 - (iv) Folding camping trailer;
- (16) "Recreational vehicle salesperson" means a person who:
 - (A) Is employed by a dealer as a salesperson whose duties include the selling or offering for sale of recreational vehicles;
 - (B) For compensation of any kind acts as a salesperson, agent, or representative of a dealer;
 - (C) Attempts to or in fact negotiates a sale of a recreational vehicle owned partially or entirely by a dealer; and
 - (D) Uses the financial resources, line of credit, or floor plan of a dealer to purchase, sell, or exchange an interest in a recreational vehicle;
- (17) "Supplier" means a person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicle parts, accessories, or components;
- (18) "Transient customer" means a person who:
 - (A) Owns a recreational vehicle;
 - (B) Is temporarily traveling through a dealer's area of sales responsibility;
 - (C) Engages a dealer to perform service work on that recreational vehicle; and
 - (D) Requires repairs that relate to the safe operation of that recreational vehicle that if not undertaken are of a nature that would render that recreational vehicle unusable for its intended purpose;
- (19) "Travel trailer" means a recreational vehicle designed to be towed by a motorized vehicle; and
- (20)(A) "Warrantor" means a person, firm, corporation, or business entity, including without limitation a manufacturer or supplier, that provides a written warranty to the consumer in connection with a new recreational vehicle or accessories, parts, or components of a new recreational vehicle.
 - (B) "Warrantor" does not include service contracts, mechanical or other insurance, or extended warranties sold for separate consideration by a dealer or other person not controlled by a manufacturer.

History. Acts 2013, No. 1043, § 10.

**23-112-1004. License requirements and application fees.
[Effective January 1, 2014.]**

(a) The following acts are unlawful:

(1) The violation of any of the provisions of this subchapter;

(2) Engaging in the business as, serving in the capacity of, or acting as a new recreational vehicle dealer, recreational vehicle salesperson, recreational vehicle manufacturer, recreational vehicle distributor, recreational vehicle factory representative, or recreational vehicle manufacturer representative in this state without first obtaining a license as provided in this subchapter; or

(3) Offering to sell or selling a recreational vehicle to a consumer except through a licensed new recreational vehicle dealer holding a dealer agreement for the line-make covering the new recreational vehicle or as may otherwise be provided in § 23-112-403(a)(3).

(b) A person, firm, association, corporation, or trust engaging, acting, or serving in more than one (1) of the capacities under subdivision (a)(2) of this section or having more than one (1) place where one (1) or more of the actions under subdivision (a)(2) of this section is carried on or conducted shall obtain and hold a separate and current license for each capacity and place of business.

(c)(1) A person shall not engage in the business of buying, selling, or exchanging new recreational vehicles unless the person:

(A) Holds a valid license issued by the Arkansas Motor Vehicle Commission for the make of recreational vehicles being bought, sold, or exchanged; or

(B) Is a bona fide employee or agent of the licensee.

(2) As used in this subsection, “engage in the business of buying, selling, or exchanging recreational vehicles” means:

(A) Displaying for sale new recreational vehicles on a lot or in a showroom;

(B) Advertising for sale new recreational vehicles regardless of the medium used; or

(C) Regularly or actively soliciting buyers for new recreational vehicles.

(d)(1) An application for a license shall be accompanied by the appropriate fees in accordance with the schedule under this subchapter.

(2) If an application is denied and the license applied for is not issued, the entire license fee shall be returned to the applicant.

(3) The license fees to be charged and received by the commission for the licenses issued under this subchapter shall be as follows:

(A) For each manufacturer, distributor, factory branch and division, or distributor branch and division, nine hundred dollars (\$900);

(B) For each manufacturer, distributor, or factory representative, four hundred dollars (\$400);

(C) For each recreational vehicle dealer, one hundred dollars (\$100);

(D) For each recreational vehicle salesperson, fifteen dollars (\$15.00);

(E) For each branch location, twenty-five dollars (\$25.00); and

(F) For each replacement certificate of license, ten dollars (\$10.00).
(4)(A)(i) A person, firm, or corporation required to be licensed under this subchapter that fails to make application for the license at the time required shall pay a penalty of fifty percent (50%) of the amount of the license fee for each thirty (30) days of default, in addition to the fees required to be paid under this subsection.

(ii) The penalty under subdivision (d)(4)(A)(i) of this section may be waived, in whole or in part, within the discretion of the commission.

(B) A license application for sales personnel shall be received in the commission office within thirty (30) days of employment.

History. Acts 2013, No. 1043, § 10.

23-112-1005. Application for license. [Effective January 1, 2014.]

(a) An application for a license required under this subchapter shall:

(1) Be verified by the oath or affirmation of the applicant;

(2) Be on a form prescribed by the Arkansas Motor Vehicle Commission and furnished to the applicant; and

(3) Contain such information as the commission deems necessary to enable it to fully determine the qualifications and eligibility of the applicant to receive the license applied for.

(b) The commission shall require that there be set forth in each application:

(1) Information relating to:

(A) The applicant's business integrity;

(B) Whether the applicant has an established place of business in the State of Arkansas and is primarily engaged in the pursuit, avocation, or business for which the license is applied for; and

(C) Whether the applicant has the proper facilities and is able to properly conduct the business for which the license is applied for; and

(2) Other pertinent information consistent with the safeguarding of the public interest and public welfare.

(c)(1)(A) In addition to the provisions of subsections (a) and (b) of this section, an application for a license as a new recreational vehicle dealer shall be accompanied by the filing with the commission of a corporate surety bond in the penal sum of fifty thousand dollars (\$50,000) on a bond form approved by the commission.

(B) In each instance that a branch license is applied for, each application shall be accompanied by the filing with the commission of a corporate surety bond in the penal sum of twenty-five thousand dollars (\$25,000) on a bond form approved by the commission.

(2) The bond shall be in effect upon the applicant's being licensed and shall be conditioned upon the applicant's complying with this subchapter.

(3) The bond shall be an indemnity for any loss sustained by any person by reason of the acts of the person bonded when those acts constitute grounds for the suspension or revocation of his or her license.

(4) The bond shall be executed in the name of the State of Arkansas for the benefit of any aggrieved party.

(5) The aggregate liability of the surety for all claimants, regardless of the number of years the bond is in force or has been in effect, shall not exceed the amount of the bond.

(6) The proceeds of the bond shall be paid upon receipt by the commission of a final judgment from an Arkansas court of competent jurisdiction against the principal and in favor of an aggrieved party.

(d) A recreational vehicle dealer shall provide proof of liability insurance coverage on all vehicles to be offered for sale in an amount equal to or greater than the amount required by the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq.

(e)(1) In addition to the provisions of subsections (a)-(d) of this section, an application for a license as a recreational vehicle dealer shall also be accompanied by the filing with the commission of a dealer agreement then in effect between the applicant and a manufacturer or distributor of the new recreational vehicles proposed to be dealt in.

(2) However, if the dealer agreement has already been filed with the commission in connection with a previous application made by the applicant, the applicant, in lieu of again filing the dealer agreement, shall identify the contract or franchise by appropriate reference and file all revisions and additions, if any, that have been made to the contract or franchise.

(f) The applicant for a license as a new recreational vehicle dealer shall furnish satisfactory evidence that the applicant:

(1) Maintains adequate space in the building or structure wherein the applicant conducts the business of selling recreational vehicles;

(2) Has or will have adequate facilities in the building or structure to perform repair and service work on recreational vehicles and adequate space for storage of new parts and accessories for recreational vehicles; and

(3) Will perform repair and warranty services on recreational vehicles at the licensed location, if the dealer provides such services.

(g)(1) A dealer shall maintain for three (3) years after the date of purchase records of each vehicle transaction to which the dealer was a party.

(2) A dealer shall:

(A) Maintain copies of all documents executed in connection with a transaction, including without limitation bills of sale, titles, odometer statements, invoices, affidavits of alteration, and reassignments; and

(B) Be open to inspection by the Executive Director of the Arkansas Motor Vehicle Commission or a commission representative acting in an official capacity during reasonable business hours and upon execution of a subpoena.

History. Acts 2013, No. 1043, § 10.

23-112-1006. Issuance of license — Change of location — Change of business or corporate name, structure, or DBA name — Dealers, manufacturers, and distributors. [Effective January 1, 2014.]

(a) The license issued to each recreational vehicle dealer, manufacturer, or distributor shall specify the location of the factory, office, branch, or division of the recreational vehicle dealer, manufacturer, or distributor.

(b) In case the location is changed, the Arkansas Motor Vehicle Commission shall endorse the change of location on the license without charge if it is within the same county in this state for a dealership or if it is within this state for a manufacturer or distributor.

(c) The change of a dealership location to another county in this state or of a manufacturer or distributor to another state requires a new license.

(d)(1) A licensee shall notify the commission in writing of any change in the business or corporate name or structure and of any alternate name or names in which the company will do business, otherwise known as "DBA names", and shall provide the original issue license with the notification of name change or addition of a DBA name or names.

(2) The commission shall endorse the change on the license without charge.

History. Acts 2013, No. 1043, § 10.

23-112-1007. Display of license — Change of employer — Factory representative and distributor representative. [Effective January 1, 2014.]

(a) A recreational vehicle factory representative shall have his or her license upon his or her person when engaged in his or her business and shall display the license upon request.

(b)(1) The name of the employer of the factory representative shall be stated on the license.

(2) In case of a change of employer, the holder of the license shall immediately mail the license to the Arkansas Motor Vehicle Commission for its endorsement on the license of the change of employer.

History. Acts 2013, No. 1043, § 10.

23-112-1008. Display of license — Change of employer — Salesperson. [Effective January 1, 2014.]

(a)(1) Except as provided in this section, a recreational vehicle salesperson shall have his or her license upon his or her person or

displayed at his or her place of employment when engaged in his or her business and shall display the license upon request.

(2) The name and address of the applicant shall be stated on the license.

(b) In case of a change of employer, the following procedure shall be followed:

(1) Within three (3) days following the change of employer, the licensee shall notify in writing the Arkansas Motor Vehicle Commission for its endorsement;

(2) Within three (3) days following the termination of employment of the licensee, the last employer of the licensee shall make a report to the commission setting forth the reasons that the services of the licensee were terminated and such other information as may be required by the commission;

(3)(A) Upon receipt by the commission of the licensee's written notification and the last employer's report, the commission shall determine if it has grounds to believe, and does believe, that the licensee is no longer qualified under this subchapter as a recreational vehicle salesperson.

(B) Under such circumstances, the commission shall immediately notify the licensee and the licensee's new employer in writing that a hearing will be held for the purpose of determining whether his or her license should be revoked or suspended, specifying the grounds for revocation or suspension, as the case may be, and the time and place for the hearing.

(C) The hearing and any appeal by the licensee with respect to the hearing shall comply with § 23-112-501 et seq.; and

(4)(A) If after the commission receives the licensee's license and fee and his or her last employer's report the Executive Director of the Arkansas Motor Vehicle Commission cannot for any reason endorse and mail to the licensee his or her license within a period of three (3) days following the receipt by the commission of the licensee's license and fee and his or her last employer's report, then the executive director shall mail to the licensee a permit in such form as the commission shall prescribe.

(B) The permit shall serve in lieu of a license until such time as the:

(i) Commission endorses and mails the license to the licensee; or

(ii) Licensee's license is revoked or suspended in accordance with this subchapter.

(C) If the license is ultimately revoked or suspended, then immediately upon the revocation or suspension the licensee shall return the permit to the commission for cancellation.

(c)(1) The commission shall maintain a permanent file with respect to each licensed recreational vehicle salesperson.

(2) Each file shall contain all pertinent information with respect to the fitness and qualifications of each licensee for use by the commission in determining whether his or her license should be revoked or suspended.

(d)(1) There is no intent under this subchapter to prevent a salesperson who has not previously been licensed as a salesperson from selling during the time required to process his or her application.

(2) The applicant shall be allowed to sell from the date of employment as long as the applicant and his or her dealer follow the procedure for license application.

History. Acts 2013, No. 1043, § 10.

23-112-1009. Expiration of license. [Effective January 1, 2014.]

Unless the Arkansas Motor Vehicle Commission by rule provides to the contrary, all licenses issued to:

(1) Recreational vehicle manufacturers, distributors, and their representatives expire June 30 following the date of issue; and

(2) Recreational vehicle dealers and salespersons expire December 31 following the date of issue.

History. Acts 2013, No. 1043, § 10.

23-112-1010. Area of sales responsibility. [Effective January 1, 2014.]

(a) The following conditions shall apply to the area of sales responsibility of a dealer included in a dealer agreement:

(1) The manufacturer shall designate in the dealer agreement the area of sales responsibility exclusively assigned to the dealer;

(2) The manufacturer shall not change the area of sales responsibility of a dealer or establish another dealer for the same line-make in that area during the term of the dealer agreement; and

(3) The area of sales responsibility shall not be reviewed or changed without the consent of both parties until one (1) year after the execution of the dealer agreement.

(b) A dealer shall not conduct sales activity or display for sale recreational vehicles outside of its designated area of sales responsibility except as provided under § 23-112-901 et seq. and commission rules.

(c) A dealer may sell off-premise or display recreational vehicles within the area of sales responsibility as provided by commission rule.

(d) The dealer shall notify the commission of any change in ownership in accordance with § 23-112-1019.

History. Acts 2013, No. 1043, § 10.

23-112-1011. Renewal of a dealer agreement. [Effective January 1, 2014.]

In a renewal of a dealer agreement, the manufacturer shall not impose on the dealer stocking requirements or retail sales targets that are inconsistent with market growth or contraction in the area of sales responsibility of the dealer.

History. Acts 2013, No. 1043, § 10.

23-112-1012. Termination, cancellation, or nonrenewal of dealer agreement. [Effective January 1, 2014.]

(a)(1) A manufacturer or distributor, directly or through any authorized officer, agent, or employee, may terminate, cancel, or fail to renew a dealer agreement with or without good cause.

(2) If the manufacturer or distributor terminates, cancels, or fails to renew the dealer agreement without good cause, the manufacturer or distributor shall comply with § 23-112-1013.

(3) If the manufacturer or distributor terminates, cancels, or fails to renew the dealer agreement with good cause, the terms of § 23-112-1013 do not apply.

(b)(1) When terminating or cancelling for good cause, the manufacturer or distributor has the burden of showing good cause for terminating or cancelling a dealer agreement with a dealer.

(2) For purposes of determining whether there is good cause for the proposed action, any of the following factors may be considered:

(A) The extent of the affected dealer's penetration in the area of sales responsibility;

(B) The nature and extent of the dealer's investment in its business;

(C) The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;

(D) The effect of the proposed action on the community;

(E) The extent and quality of the dealer's service under warranties associated with recreational vehicles;

(F) The failure to follow agreed-upon procedures or standards related to the overall operation of the dealership; and

(G) The performance of the dealer under the terms of its dealer agreement.

(c)(1) Except as otherwise provided in this section, a manufacturer or distributor shall provide a dealer with at least ninety (90) days' prior written notice of termination, cancellation, or nonrenewal of the dealer agreement if the dealer is being terminated for good cause.

(2) The notice shall state:

(A) All reasons for the proposed termination, cancellation, or nonrenewal of the dealer agreement; and

(B)(i) That if within thirty (30) days following receipt of the notice the dealer provides to the manufacturer or distributor a written notice of intent to cure all claimed deficiencies, the dealer will then have ninety (90) days following receipt of the original notice to rectify the deficiencies.

(ii) If the deficiencies are rectified within ninety (90) days following receipt of the original notice, the manufacturer's or distributor's notice is voided.

(iii) If the dealer fails to provide the notice of intent to cure the deficiencies in the prescribed time period, the termination, cancella-

tion, or nonrenewal takes effect thirty (30) days after the dealer's receipt of the original notice from the manufacturer. If the dealer has new and untitled recreational vehicle inventory, the inventory may be sold under § 23-112-1014.

(3) The notice period may be reduced to thirty (30) days if the manufacturer's or distributor's grounds for termination, cancellation, or nonrenewal are due to any of the following good-cause factors:

(A) A dealer's or one (1) of its owners' being convicted of, or entering a plea of nolo contendere to, a felony;

(B) The abandonment or closing of the business operations of the dealer for ten (10) consecutive business days unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the dealer has no control;

(C) A misrepresentation by the dealer materially affecting the business relationship;

(D) A suspension or revocation of the dealer's license or refusal to renew the dealer's license by the commission; or

(E) A material violation of this subchapter that is not cured within thirty (30) days after the written notice by the manufacturer.

(4) The notice provisions of this subsection do not apply if the reason for termination, cancellation, or nonrenewal is:

(A) The dealer's insolvency;

(B) The occurrence of an assignment for the benefit of creditors; or

(C) Bankruptcy.

(d)(1) A dealer may terminate or cancel its dealer agreement with a manufacturer or distributor with or without good cause by giving ninety (90) days' written notice.

(2) If the termination or cancellation is for good cause, the notice shall state:

(A) All reasons for the proposed termination or cancellation; and

(B) That if within thirty (30) days following receipt of the notice the manufacturer or distributor provides to the dealer a written notice of intent to cure all claimed deficiencies, the manufacturer or distributor will then have ninety (90) days following receipt of the original notice to rectify the deficiencies.

(3)(A) If the deficiencies are rectified within ninety (90) days from receipt of the original notice, the dealer's notice is voided.

(B) If the manufacturer or distributor fails to provide the notice of intent to cure the deficiencies in the time period prescribed in the original notice of termination or cancellation, the pending termination or cancellation shall take effect thirty (30) days after the manufacturer's or distributor's receipt of the original notice.

(4)(A) If the dealer terminates, cancels, or fails to renew the dealer agreement without good cause, the terms of § 23-112-1013 do not apply.

(B) If the dealer terminates, cancels, or fails to renew the dealer agreement with good cause, the terms of § 23-112-1013 do apply.

(C) The dealer has the burden of showing good cause.

(D) Any of the following items shall be deemed good cause for the proposed termination, cancellation, or nonrenewal action by a dealer:

(i) A manufacturer's being convicted of, or entering a plea of nolo contendere to, a felony;

(ii) The business operations of the manufacturer having been abandoned or closed for ten (10) consecutive business days, unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control;

(iii) A significant misrepresentation by the manufacturer materially affecting the business relationship;

(iv) A material violation of this subchapter which is not cured by the manufacturer within thirty (30) days after written notice; or

(v) A declaration by the manufacturer of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy.

(e) If the dealer agreement is terminated or cancelled with or without cause, the terminating or cancelling party shall notify the commission of the termination or cancellation within ten (10) days of sending the termination or cancellation notice and include a copy of the notice.

History. Acts 2013, No. 1043, § 10.

23-112-1013. Repurchase of inventory. [Effective January 1, 2014.]

If the dealer agreement is terminated, canceled, or not renewed by the manufacturer or distributor without good cause under § 23-112-1011 or by the dealer for good cause as defined in § 23-112-1011 and the manufacturer fails to cure the claimed deficiencies under § 23-112-1011, the manufacturer, at the election of the dealer and within forty-five (45) days after termination, cancellation, or nonrenewal, shall repurchase:

(1)(A) All new, untitled recreational vehicles that were acquired from the manufacturer or distributor within twelve (12) months before the effective date of the notice of termination, cancellation, or nonrenewal that have not been used, except for demonstration purposes, and that have not been altered or damaged, at one hundred percent (100%) of the net invoice cost, including transportation, less applicable rebates and discounts to the dealer.

(B) If any of the vehicles repurchased under this subchapter are damaged but do not trigger a consumer disclosure requirement, the amount due the dealer shall be reduced by the cost to repair the vehicle.

(C) Damage to a recreational vehicle before delivery to a dealer that is disclosed at the time of delivery shall not disqualify its repurchase under this subdivision (1);

(2) All undamaged accessories and proprietary parts sold to the dealer for resale within the twelve (12) months before termination,

cancellation, or nonrenewal, if accompanied by the original invoice, at one hundred five percent (105%) of the original net price paid to the manufacturer or distributor to compensate the dealer for handling, packing, and shipping the parts; and

(3) Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at one hundred percent (100%) of the dealer's net cost plus freight, destination, delivery, and distribution charges and sales taxes, if any, if:

(A) The diagnostic equipment, special tools, current signage, and other equipment and machinery were purchased by the dealer within five (5) years before termination, cancellation, or nonrenewal upon the manufacturer's or distributor's request; and

(B) The dealer meets the burden of establishing that the diagnostic equipment, special tools, current signage, and other equipment and machinery can no longer be used in the normal course of the dealer's ongoing business.

History. Acts 2013, No. 1043, § 10.

**23-112-1014. Sale of remaining inventory after termination.
[Effective January 1, 2014.]**

(a) A dealer is not prohibited from selling the remaining in-stock inventory of a particular line-make after a dealer agreement has been terminated or not renewed under § 23-112-1012.

(b) If recreational vehicles of a line-make are not returned or required to be returned to the manufacturer or distributor, the dealer may continue to sell all line-makes that were subject to the dealer agreement and are currently in stock until those line-makes are no longer in the dealer's inventory.

History. Acts 2013, No. 1043, § 10.

23-112-1015. Change of ownership of dealer — Family succession. [Effective January 1, 2014.]

(a) The following conditions apply to a proposed sale of the business assets, transfer of the stock, or other transaction that will result in a change of ownership of a dealer, except a transaction described in subsection (b) of this section:

(1) The dealer shall:

(A) Provide written notice to the manufacturer within sixty (60) days before the proposed closing of the transaction; and

(B) Include all supporting documentation as may be reasonably required by the manufacturer or distributor to determine if an objection to the sale may be made;

(2) In the absence of a breach by the selling dealer of its dealer agreement or a failure to comply with subdivision (a)(1) of this section, the manufacturer or distributor shall not object to the proposed change

in ownership unless the prospective transferee meets one (1) or more of the following:

(A) The prospective transferee has previously been terminated by the manufacturer for breach of its dealer agreement;

(B) The prospective transferee has been convicted of a felony or any crime of fraud, deceit, or moral turpitude in the preceding ten (10) years;

(C) The prospective transferee does not have:

(i) An application for a recreational vehicle dealer's license pending; or

(ii) A tentative dealer agreement with a recreational vehicle manufacturer to conduct business as a dealer in this state;

(D) The prospective transferee does not have an active line of credit sufficient to purchase a manufacturer's product; or

(E) In the preceding ten (10) years the prospective transferee has undergone:

(i) Bankruptcy;

(ii) Insolvency;

(iii) A general assignment for the benefit of creditors; or

(iv) The appointment of a receiver, trustee, or conservator to take possession of the transferee's business or property; and

(3)(A) If the manufacturer or distributor objects to a proposed change of ownership, the manufacturer or distributor shall give written notice of its reasons to the dealer within fifteen (15) business days after receipt of the dealer's notification and complete documentation.

(B) If the manufacturer or distributor does not give timely notice of its objection, the change or sale shall be deemed approved.

(C) The manufacturer or distributor has the burden of proof when objecting to the proposed change of ownership.

(b) The following conditions apply concerning the death, incapacity, or retirement of the designated dealer principal:

(1) It is unlawful for a manufacturer or distributor:

(A) To fail to provide a dealer an opportunity to designate in writing a family member as a successor to the dealership; and

(B) To prevent or refuse to honor the succession to a dealership by a family member unless the manufacturer or distributor has provided to the dealer written notice of its objections within thirty (30) days after receipt of the dealer's modification of the dealer's succession plan;

(2) In the absence of a breach of the dealer agreement, the manufacturer or distributor may object to the succession for the following reasons:

(A) Conviction of the successor of a felony or any crime of fraud, deceit, or moral turpitude in the preceding ten (10) years;

(B) Bankruptcy or insolvency of the successor in the preceding ten (10) years;

(C) Prior termination by the manufacturer or distributor of the successor for breach of a dealer agreement;

(D) The lack of an active line of credit for the successor sufficient to purchase the manufacturer's product; or

(E) The lack of:

(i) A pending application for a recreational vehicle dealer's license; or

(ii) A tentative dealer agreement with a recreational vehicle manufacturer to conduct business as a dealer in this state;

(3) The manufacturer or distributor has the burden of proof regarding its objection to the succession to a dealership by a family member; and

(4) The consent of the manufacturer or distributor is required for the succession to a dealership by a family member if the succession involves a relocation of the business or an alteration of the terms and conditions of the dealer agreement.

(c) The dealer shall notify the commission of any change in ownership in accordance with § 23-112-1019.

History. Acts 2013, No. 1043, § 10.

23-112-1016. Warranty obligation. [Effective January 1, 2014.]

(a) Each warrantor shall:

(1) Specify in writing to each of its dealers the obligations for preparation, delivery, and warranty service on its products;

(2) Compensate the dealer for warranty service required of the dealer by the warrantor;

(3)(A) Provide the dealer:

(i) The schedule of compensation to be paid; and

(ii) The time allowances for the performance of any work or service.

(B) The schedule of compensation shall include:

(i) Reasonable compensation for diagnostic work as well as warranty labor; and

(ii) Reasonable time allowances in the schedule for the diagnosis and performance of warranty labor.

(C) In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration are:

(i) The actual wage rates being paid by the dealer; and

(ii) The actual retail labor rate being charged by the recreational vehicle dealers in the community in which the dealer is doing business;

(4) Compensate a dealer for warranty labor not less than the lowest retail labor rates actually charged by the dealer for like nonwarranty labor as long as such rates are reasonable;

(5) For individual warranty parts, reimburse the dealer at actual wholesale cost plus a minimum handling charge of thirty percent (30%) and the cost, if any, of freight to return warranty parts to the warrantor;

(6) For complete components or accessories, provide the dealer with the new complete component or accessory plus the cost, if any, of freight to return the defective complete component or accessory to the warrantor; and

(7)(A) Approve or disapprove warranty claims in writing within thirty (30) days after the date of submission by the dealer in the manner and form prescribed by the warrantor.

(B) Claims not specifically disapproved in writing within thirty (30) days shall be considered to be approved.

(C) A claim that is approved or considered to be approved under this section shall be paid within sixty (60) days of submission.

(b)(1) Warranty audits of dealer records may be conducted by the warrantor on a reasonable basis.

(2) Dealer claims for warranty compensation shall not be denied except for cause, including without limitation:

(A) Performance of nonwarranty repairs;

(B) Material noncompliance with the warrantor's published policies and procedures;

(C) Lack of material documentation;

(D) Fraud; or

(E) Misrepresentation.

(c) A dealer shall:

(1) Submit warranty claims within thirty (30) days after completing work; and

(2) Notify the warrantor in writing if the dealer is unable to perform any warranty repairs within ten (10) days of receipt of a written complaint from a consumer.

(d)(1) A warrantor shall not:

(A) Fail to perform any of its warranty obligations with respect to its warranted products;

(B)(i) Fail to include, in written notices of factory campaigns to recreational vehicle owners and dealers, the expected date by which necessary parts and equipment, including tires and chassis or chassis parts, will be available to dealers to perform the factory campaign work.

(ii) The warrantor may ship parts to the dealer to effect the factory campaign work, and if the parts are in excess of the dealer's requirements, the dealer may return unused undamaged parts to the warrantor for credit after completion of the factory campaign;

(C) Fail to compensate any of its dealers for authorized repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer, if the carrier is designated by the warrantor, factory branch, or distributor;

(D) Fail to compensate any of its dealers in accordance with the schedule of compensation provided to the dealer under this section if performed in a timely and competent manner;

(E) Intentionally misrepresent in any way to purchasers of recreational vehicles that warranties with respect to the manufacture,

performance, or design of the vehicle are made by the dealer as warrantor or co-warrantor; or

(F) Require the dealer to make warranties to customers in any manner related to the manufacture of the recreational vehicle.

(2)(A) Notwithstanding the terms of any dealer agreement, it is a violation of this subchapter for a warrantor to fail to indemnify and hold harmless its new recreational vehicle dealer against any losses or damages to the extent that the losses or damages are caused by the negligence or willful misconduct of the warrantor.

(B) A new recreational vehicle dealer shall not be denied indemnification for failing to discover, disclose, or remedy a defect in the design or manufacturing of a new recreational vehicle.

(C) A new recreational vehicle dealer may be denied indemnification if the new recreational vehicle dealer fails to remedy a known and announced defect in accordance with the written instructions of a warrantor for whom the new recreational vehicle dealer is obligated to perform warranty service.

(D)(i) A new recreational vehicle dealer shall provide to a warrantor written notice of a pending lawsuit in which allegations are made that are covered by this subchapter within ten (10) business days after the dealer receives written notice of the lawsuit.

(ii) Written notice to the warrantor shall be by any method that provides a receipt for delivery.

(E) Subdivision (d)(2) of this section applies even after the new recreational vehicle is titled.

(e)(1) It is a violation of this subchapter for any dealer to:

(A) Fail to perform predelivery inspection functions, as specified by the warrantor, in a competent and timely manner;

(B) Fail to perform warranty service work authorized by the warrantor in a competent and reasonably timely manner on a transient customer's vehicle of a line-make sold and serviced or serviced by that dealer;

(C) Fail to accurately document the:

(i) Time spent completing each repair;

(ii) Total number of repair attempts conducted on a single unit; and

(iii) Total number of repair attempts for the same repair conducted on a single vehicle;

(D) Fail to maintain written records, including a consumer's signature, regarding the amount of time a unit is stored for the consumer's convenience during a repair;

(E) Make fraudulent warranty claims; or

(F) Misrepresent the terms of a warranty.

(2)(A) Notwithstanding the terms of any dealer agreement, it is a violation of this subchapter for a new recreational vehicle dealer to fail to indemnify and hold harmless its warrantor against any losses or damages to the extent that the losses or damages are caused by the negligence or willful misconduct of the new recreational vehicle dealer.

(B) A warrantor shall provide to a new recreational vehicle dealer a copy of any pending lawsuit or similar proceeding in which allegations are made that come within the provisions of this subsection within ten (10) days after receiving such suit.

(C) This subdivision (e)(2) applies even after the new recreational vehicle is titled.

History. Acts 2013, No. 1043, § 10.

23-112-1017. Damage to recreational vehicles before arrival at dealership. [Effective January 1, 2014.]

(a) All the following apply if a new recreational vehicle is damaged before transit to the dealer or is damaged in transit to the dealer when the carrier or means of transportation has been selected by the manufacturer or distributor:

(1) The dealer shall notify the manufacturer or distributor of the damage within the time frame specified in the dealer agreement and:

(A) Request authorization from the manufacturer or distributor to replace the components, parts, and accessories damaged or otherwise correct the damage; or

(B) Reject the vehicle within the time frame specified in the dealer agreement;

(2) If the manufacturer or distributor refuses or fails to authorize repair of the damage within ten (10) days after receipt of notification or if the dealer rejects the recreational vehicle because of damage, ownership of the new recreational vehicle reverts to the manufacturer or distributor; and

(3) The dealer shall exercise due care in custody of the damaged recreational vehicle, but the dealer has no other obligations, financial or otherwise, with respect to that recreational vehicle.

(b)(1) A dealer agreement shall include a time frame for inspection and rejection by the dealer.

(2) The time frame shall not be less than three (3) business days after the physical delivery of the recreational vehicle.

(c) As used in this section, “damaged before transit” and “damaged in transit” do not include inspection or warranty repairs or service.

(d)(1) A recreational vehicle that has at the time of delivery to the dealer an unreasonable number of miles on its odometer, as determined by the dealer, may be subject to rejection by the dealer and reversion of the vehicle to the manufacturer or distributor.

(2) However, if the number of miles on the odometer of the recreational vehicle is less than the sum of the distance in miles between the dealer and the factory of the manufacturer or point of distribution plus one hundred (100) miles, the dealer shall not consider the number of miles on the odometer unreasonable.

History. Acts 2013, No. 1043, § 10.

23-112-1018. Prohibited activity of a manufacturer or distributor — Coercion. [Effective January 1, 2014.]

(a) A manufacturer or distributor shall not coerce or attempt to coerce a dealer to:

- (1) Purchase a product that the dealer did not order;
- (2) Enter into an agreement with the manufacturer or distributor; or
- (3) Enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities provided under this subchapter.

(b) As used in this subchapter, “coerce” includes without limitation:

- (1) Threatening to terminate, cancel, or not renew a dealer agreement without good cause;
- (2) Threatening to withhold product lines the dealer is entitled to purchase under the dealer agreement; or
- (3) Delaying delivery of recreational vehicles as an inducement to amend the dealer agreement.

History. Acts 2013, No. 1043, § 10.

23-112-1019. License — Denial, revocation, and suspension. [Effective January 1, 2014.]

(a) For any of the following reasons, the Arkansas Motor Vehicle Commission may deny an application for a license required by this subchapter or revoke or suspend a license after it has been granted:

- (1)(A) Selling or soliciting sales of a recreational vehicle without a license issued by the commission.
- (B) The unlawful sale or solicitation of each recreational vehicle constitutes a separate offense;
- (2) On satisfactory proof of the unfitness of the applicant or the licensee, as the case may be, under the standards established and set out in this subchapter;
- (3) Fraud practiced or any material misstatement made by an applicant in an application for license under this subchapter;
- (4) Failure to comply with any provision of this subchapter or with any rule promulgated by the commission under authority vested in it by this subchapter;
- (5) Change of condition after a license is granted or failure to maintain the qualifications for license;
- (6) Continued violation of any of the provisions of this subchapter or of any of the rules of the commission;
- (7) Violation of any law relating to the sale, distribution, or financing of recreational vehicles;
- (8) Defrauding a retail buyer to the buyer’s damage;
- (9) Failure to perform a written agreement with a retail buyer;
- (10) Selling, attempting to sell, or advertising for sale vehicles from a location other than that set forth on the license except as provided under § 23-112-901;

(11) Falsifying, altering, or neglecting to endorse or deliver a certificate of title to a transferee or lawful owner or failing to properly designate a transferee on a document of assignment or certificate of title;

(12) Knowingly purchasing, selling, or otherwise acquiring or disposing of a stolen recreational vehicle;

(13) Submitting a false affidavit setting forth that a title has been lost or destroyed;

(14) Passing title or reassigning title as a dealer without a dealer's license or when the dealer's license has been suspended or revoked;

(15) For a person representing that he or she is a dealer or salesperson, either verbally or in an advertisement, when the person is not licensed as a dealer or salesperson;

(16) Assisting a person in the sale of a recreational vehicle who is not licensed as a dealer by the commission;

(17) Being a manufacturer who fails to specify the delivery and preparation obligations of its recreational vehicle dealers, as is required for the protection of the buying public, before delivery of new recreational vehicles to retail buyers;

(18) On satisfactory proof that a manufacturer, distributor, distributor branch or division, or factory branch or division has unfairly and without due regard to the equities of the parties or to the detriment of the public welfare failed to properly fulfill a warranty agreement or to adequately and fairly compensate any of its recreational vehicle dealers for labor or parts expenses incurred by the dealer with regard to factory warranty agreements performed by the dealer;

(19) For the commission of any act prohibited by this subchapter or the failure to perform any of the requirements of this subchapter;

(20) Using or permitting the use of special license plates assigned to a licensee for any other purpose than those permitted by law;

(21) Disconnecting, turning back, or resetting the odometer of a motor home in violation of state or federal law;

(22) Accepting an open assignment of title or bill of sale for a recreational vehicle that does not identify the licensee as the purchaser or assignee of the recreational vehicle;

(23)(A) Failing to notify the commission of a change in ownership, location, or dealer agreement or any other matters the commission may require by rule.

(B) The notification shall be in writing and submitted to the commission at least fifteen (15) days before the effective date of the change;

(24) Failing to endorse and deliver an assignment and warranty of title to the buyer under § 27-14-902;

(25) Using or permitting the use of a temporary cardboard buyer's tag assigned to the dealer for any purpose other than what is permitted under § 27-14-1705; and

(26) Failure of a dealer to submit or deliver a certificate of title or manufacturer's certificate of origin to a buyer within a reasonable period of time.

(b) The revocation or suspension of the license of a manufacturer, factory branch or division, distributor, or distributor branch or division may be limited to:

(1) One (1) or more municipalities or counties; or

(2)(A) The sales area of a dealer whose franchise is unfairly cancelled or terminated under this subchapter or whose franchise is not renewed in violation of this subchapter.

(B) However, when a franchise is unfairly cancelled or terminated under this subchapter or is not renewed in violation of this subchapter in a metropolitan area serviced by several recreational vehicle dealers handling the same recreational vehicles, the revocation or suspension does not apply to the remaining recreational vehicle dealers in the metropolitan area.

History. Acts 2013, No. 1043, § 10.

23-112-1020. Monetary penalty in lieu of suspension or revocation of license — Civil penalty. [Effective January 1, 2014.]

(a) For a monetary penalty in lieu of suspension or revocation of a license, the following apply:

(1)(A) If after alternative proceedings or notice and hearing the Arkansas Motor Vehicle Commission finds that a person holding a license under this subchapter is guilty of a violation of this subchapter or rules promulgated under this subchapter, the commission may impose a monetary penalty upon the licensee in lieu of suspension or revocation of a license.

(B)(i) The commission may require the licensee to pay the monetary penalty with the sanction that the license shall be suspended until the penalty is paid.

(ii) The period of suspension shall not exceed ninety (90) days from entry of the commission's order or final order on appeal.

(C) The penalty in lieu of suspension or revocation of a license may be imposed only if the commission formally finds that the public interest would not be impaired by the imposition of the penalty and the payment of the penalty will achieve the desired disciplinary results;

(2)(A) If the commission finds that there is sufficient cause upon which to base the revocation of a license, the amount of the monetary penalty in lieu of revocation shall not exceed ten thousand dollars (\$10,000).

(B)(i) If the commission finds that there is sufficient cause upon which to base the suspension of a license, the amount of the monetary penalty in lieu of suspension shall not be less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) per day for each day the license would otherwise be suspended.

(ii) However, the amount of the penalty shall not exceed the aggregate of five thousand dollars (\$5,000);

(3) If the commission has revoked the license because of the violation, the commission shall not impose a penalty;

(4) Each instance when this subchapter or a rule is violated constitutes a separate violation; and

(5) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the commission shall have the power to file suit in Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid.

(b) The following apply to a civil penalty:

(1) If after request for alternative proceedings or notice and hearing the Arkansas Motor Vehicle Commission finds that a person not holding a license under this subchapter is guilty of a violation of this subchapter or rules promulgated under this subchapter, the commission may impose a monetary penalty upon the person not to exceed one thousand dollars (\$1,000) per violation;

(2) Each day of violation of this subchapter or of a rule constitutes a separate violation subjecting the person to a separate civil penalty;

(3) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the commission may file suit in Pulaski County Circuit Court to obtain a judgment for the amount of the penalty not paid; and

(4)(A) Repeated violations by a person not holding a license under this subchapter shall result in an increase in the penalty assessed by the commission.

(B) As used in this subdivision (b)(4), “second violation” and “subsequent violation” mean a violation of the same nature as a previously remedied violation that occurs within five (5) years of the remedied violation by a person not holding a license under this subchapter.

(C) The commission may impose a penalty not to exceed two thousand five hundred dollars (\$2,500) for a second violation, with the penalty increasing in increments of two thousand five hundred dollars (\$2,500) for each subsequent violation.

History. Acts 2013, No. 1043, § 10.

23-112-1021. Enforcement. [Effective January 1, 2014.]

(a) The Arkansas Motor Vehicle Commission may enter orders that direct compliance with this subchapter and rules under this subchapter if any of the following conditions have been met:

(1) The commission has conducted a hearing within sixty (60) days on the matter;

(2) The commission has made written findings that the public interest and welfare require the person or entity against whom the commission is acting to take the specified action; or

(3) The commission finds that the current civil or administrative penalties are insufficient.

(b) The commission may enforce its findings and conclusions upon entry of an order under subsection (a) of this section.

History. Acts 2013, No. 1043, § 10.

23-112-1022. Civil action and mediation. [Effective January 1, 2014.]

(a)(1) A dealer, manufacturer, distributor, or warrantor injured by another party's violation of this subchapter may bring a civil action in circuit court to recover actual damages.

(2) The court shall award attorney's fees and costs to the prevailing party in such an action.

(b)(1) Venue for a civil action under this section is in the county in which the dealer's business is located.

(2) In an action involving more than one (1) dealer, venue may be in any county in which any dealer that is party to the action is located.

(c)(1) Before bringing suit under this section, the party bringing suit for an alleged violation shall serve a written demand for mediation upon the offending party.

(2) The demand for mediation shall:

(A) Be served upon the other party via certified mail at the address stated within the dealer agreement between the parties; and

(B) Contain a brief statement of the dispute and the relief sought by the party filing the demand.

(3)(A) Within twenty (20) days after the date on which a demand for mediation is served, the parties shall:

(i) Mutually select an independent certified mediator; and

(ii) Meet with the mediator to attempt to resolve the dispute.

(B) The meeting place shall be in this state in a location selected by the mediator.

(C) The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation of both parties.

(4)(A) The service of a demand for mediation under this section tolls the time for the filing of a complaint, petition, protest, or other action under this subchapter until representatives of both parties have met with a mutually selected mediator to attempt to resolve the dispute.

(B) If a complaint, petition, protest, or other action is filed before that meeting, the court:

(i) Shall enter an order suspending the proceeding or action until the mediation meeting has occurred; and

(ii) Upon written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this section, may enter an order suspending the proceeding or action for as long as the court considers appropriate.

(5) The parties to the mediation shall:

(A) Bear their own costs for attorney's fees; and

(B) Divide equally the cost of the mediator.

History. Acts 2013, No. 1043, § 10.

23-112-1023. Injunction. [Effective January 1, 2014.]

(a) In addition to any remedy provided in this subchapter or otherwise available by law, a manufacturer, distributor, warrantor, or a dealer may apply to a court of competent jurisdiction for the issuance, upon a hearing and for cause shown, of a temporary or permanent injunction or other equitable relief restraining a person from doing any of the following:

- (1) Acting as a dealer without being properly licensed;
- (2) Committing a single act or multiple acts in violation of this subchapter; or
- (3) Failing or refusing to comply with any requirement of this subchapter.

(b) The Arkansas Motor Vehicle Commission may seek an injunction upon affidavit in the circuit court for the county in which the commission's office is located to prevent a person, firm, partnership, association, corporation, or legal entity from violating a provision of this subchapter or a rule promulgated by the commission.

(c) The commission shall not be required to:

- (1) Execute or give bond for costs, indemnity, or stay; or
- (2) Give security as a condition to the issuance of a restraining order or injunction, either temporary or permanent.

History. Acts 2013, No. 1043, § 10.

CHAPTER 113

LOCAL OPTION HORSE RACING AND GREYHOUND RACING ELECTRONIC GAMES OF SKILL ACT

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. AUTHORIZATION OF WAGERING ON ELECTRONIC GAMES OF SKILL SUBJECT TO APPROVAL AT LOCAL OPTION ELECTION.
- 3. ARKANSAS RACING COMMISSION.
- 4. CONTRIBUTION TO PURSES AND PROMOTION OF ARKANSAS THOROUGHBRED AND GREYHOUND BREEDING ACTIVITIES.
- 5. PRIVILEGE FEES.
- 6. MISCELLANEOUS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 23-113-101. Legislative findings.
- 23-113-102. Title.

SECTION.

- 23-113-103. Definitions.

Effective Dates. Acts 2005, No. 1151, § 2: emergency clause failed to pass. Emergency clause provided: "It is found and determined by the Eighty-Fifth Gen-

eral Assembly of the State of Arkansas that competition from outside the State of Arkansas is having an adverse impact on the horse racing and greyhound racing industries in this state and related agribusinesses; that Louisiana racetracks are now offering to their patrons wagering on various types of electronic wagering games; that racetracks in the State of Oklahoma will soon be offering to their patrons wagering on electronic games, and the State of Texas is considering doing the same; that these economic conditions are adversely affecting, and these impending and potential developments will in the very near future more substantially adversely affect, the economic benefits to the State of Arkansas directly and indirectly accruing from the horse racing and greyhound racing industries and related agribusinesses; that these conditions are adversely affecting, and these impending and potential developments will in the

very near future more substantially adversely affect, jobs, economic development, and tourism in Arkansas, and it is imperative to address immediately these conditions, developments and competitive burdens, and in order to accomplish these objectives, essential to the welfare of the State of Arkansas and its citizens and residents, the provisions set forth in this act must be effective immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the governor and the veto is overridden, the date the last house overrides the veto."

23-113-101. Legislative findings.

(a) It is found and determined by the General Assembly that:

(1) Horse racing and greyhound racing parks in the State of Arkansas promote economic and agribusiness activity in the state and especially in the local communities where the horse racing and greyhound racing parks are located;

(2) Arkansas horse racing and greyhound racing parks also often promote tourism and positive publicity for the state, including recent national publicity surrounding the racehorse "Smarty Jones", the winner of the 2004 Arkansas Derby and the 2004 Kentucky Derby, that went on to be honored as the 2004 best three-year-old thoroughbred horse in the country;

(3) Many states, including Louisiana and Oklahoma, have authorized racetracks to offer wagering on additional forms of electronic games. The State of Texas is considering doing the same;

(4) Many Arkansans travel to adjoining states in order to wager at legal gambling establishments in those states. This adversely impacts Arkansas tourism and results in certain economic activity leaving Arkansas for the benefit of adjoining states;

(5) Economic and agribusiness benefits derived by the State of Arkansas from horse racing and greyhound racing parks in Arkansas, including Arkansas farms and breeding operations, are and will continue to be adversely impacted by these developments in adjoining and other states;

(6) Although Arkansas horse racing and greyhound racing parks presently are allowed to offer wagering on electronic games based on

previously run horse and greyhound races, racetracks in adjoining and other states are allowed to offer more types of electronic wagering games; and

(7) These developments place Arkansas horse racing and greyhound racing parks at a competitive disadvantage to their counterparts in other states and especially affect the economies of the local Arkansas communities and related agribusinesses where the horse racing and greyhound racing parks are located in Arkansas.

(b) It is further found and determined by the General Assembly that:

(1) If no effort is made to address these issues:

(A) Arkansans will continue to spend money out of state which might otherwise be spent in Arkansas;

(B) Arkansas horse racing and greyhound racing parks will remain at a competitive disadvantage to their out-of-state counterparts, and this will not only adversely impact horse racing and greyhound racing parks in Arkansas, but also related Arkansas agribusinesses, including farms and breeding operations, and other Arkansas businesses that realize economic benefits from horse racing and greyhound racing activities in Arkansas; and

(C) Jobs at Arkansas horse racing and greyhound racing parks and at related Arkansas agribusinesses, including farms and breeding operations, along with jobs at other Arkansas businesses that realize economic benefits from horse racing and greyhound racing activities in Arkansas, may become in jeopardy; and

(2) If this chapter is enacted and becomes law and local voters in the communities where the horse racing and greyhound racing parks are located approve the wagering on additional games of skill at Arkansas horse racing and greyhound racing parks as provided in this chapter:

(A) Arkansans will spend money in Arkansas which might otherwise have been spent out of state;

(B) Arkansas horse racing and greyhound racing parks will become more competitive, and this will provide economic benefits to related Arkansas agribusinesses, including farms and breeding operations, as well as other related Arkansas businesses; and

(C) Jobs at Arkansas horse racing and greyhound racing parks and at related agribusinesses, along with jobs at other businesses that realize economic benefits from horse racing and greyhound racing activities in Arkansas, will be better protected and more secure, and additional job opportunities may be created.

(c) For the reasons stated in subsections (a) and (b) of this section and other reasons, the General Assembly finds that cities or counties where horse racing or greyhound racing parks are located in Arkansas should have the opportunity to address these issues and promote economic development, tourism, and agribusiness by allowing the voters in those cities or counties to have the opportunity by local election to authorize horse racing or greyhound racing parks in their communities to offer wagering on additional forms of electronic games of skill.

History. Acts 2005, No. 1151, § 1.

CASE NOTES

Constitutionality.

Citizens failed to meet burden to show unconstitutionality of legislation, Acts 2005, No. 1151, that granted franchise holders permission to allow wagering on electronic games because the Act was not

an impermissible delegation of authority to the Arkansas Racing Commission, and there was nothing irrational or arbitrary about the legislature's decision. *Gallas v. Alexander*, 371 Ark. 106, 263 S.W.3d 494 (2007).

23-113-102. Title.

This chapter shall be known and may be cited as the "Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act".

History. Acts 2005, No. 1151, § 1.

23-113-103. Definitions.

As used in this chapter:

(1) "Arkansas Greyhound Racing Law" means the Arkansas Greyhound Racing Law, § 23-111-101 et seq.;

(2) "Arkansas Horse Racing Law" means the Arkansas Horse Racing Law, § 23-110-101 et seq.;

(3) "Commission" means the Arkansas Racing Commission or its successor having jurisdiction over horse racing and greyhound racing in this state;

(4) "Director" means the Director of the Department of Finance and Administration;

(5)(A) "Electronic games of skill" means games played through any electronic device or machine that afford an opportunity for the exercise of skill or judgment when the outcome is not completely controlled by chance alone.

(B) "Electronic games of skill" does not include pari-mutuel wagering on horse racing and greyhound racing governed by the Arkansas Horse Racing Law, § 23-110-101 et seq., or the Arkansas Greyhound Racing Law, § 23-111-101 et seq., whether pari-mutuel wagering on live racing, simulcast racing, or races conducted in the past and rebroadcast by electronic means;

(6) "Franchise holder" means any person holding a franchise to conduct horse racing under the Arkansas Horse Racing Law, § 23-110-101 et seq., or greyhound racing under the Arkansas Greyhound Racing Law, § 23-111-101 et seq.;

(7) "Net wagering revenues from electronic games of skill" means the gross wagering revenues received by a franchise holder from wagers placed by patrons on electronic games of skill, less amounts paid out or separately reserved under rules of the commission for future pay out to patrons on the wagers; and

(8) "Person" means any individual, corporation, partnership, association, trust, or other entity.

History. Acts 2005, No. 1151, § 1.

CASE NOTES

Electronic Game of Skill.

In subdivision (5) of this section, the legislature provided very clear guidelines for determining whether a game or device constituted an electronic game of skill. First and foremost, the Arkansas General Assembly defined the term “electronic

game of skill.” In addition, it specifically set forth what it considered to be a guideline in determining whether a game is not completely controlled by chance alone. *Gallas v. Alexander*, 371 Ark. 106, 263 S.W.3d 494 (2007).

SUBCHAPTER 2 — AUTHORIZATION OF WAGERING ON ELECTRONIC GAMES OF SKILL SUBJECT TO APPROVAL AT LOCAL OPTION ELECTION

SECTION.

23-113-201. Wagering on electronic games of skill conducted

by franchise holders —
Limitations.

23-113-201. Wagering on electronic games of skill conducted by franchise holders — Limitations.

(a)(1) In addition to pari-mutuel wagering on horse racing and greyhound racing authorized by the Arkansas Horse Racing Law, § 23-110-101 et seq., and the Arkansas Greyhound Racing Law, § 23-111-101 et seq., respectively, any franchise holder may conduct wagering on electronic games of skill in accordance with this chapter at any time or times during the calendar year at locations on the grounds of the franchise holder’s racetrack park site where the franchise holder is authorized by the Arkansas Racing Commission to conduct pari-mutuel wagering on horse racing or greyhound racing pursuant to the Arkansas Horse Racing Law, § 23-110-101 et seq., or the Arkansas Greyhound Racing Law, § 23-111-101 et seq., as the case may be.

(2)(A)(i) The franchise holder may not conduct wagering on electronic games of skill under this chapter unless the question of the wagering on electronic games of skill under this chapter has been submitted to the electors of the city, town, or county in which the franchise holder’s racetrack park site is located and where the wagering on electronic games of skill is to be conducted, at any special or general election, and a majority of the electors voting on the question have approved at the election wagering on electronic games of skill under this chapter.

(ii) If the racetrack park is located within the corporate limits of a city or town, the question shall be submitted to the electors of either the city, town, or county in which the racetrack park is located, as requested by the franchise holder, and if the racetrack park is not located within the corporate limits of a city or town, then the question shall be submitted to the electors of the county in which the racetrack park is located.

(B)(i) The governing body of the city, town, or county, as the case may be, shall by ordinance submit the question to the electors if requested by the franchise holder.

(ii) If the franchise holder makes a request for an election, the franchise holder shall present to the governing body evidence of anticipated benefits to economic development, job creation, tourism, and agribusiness which may result, directly or indirectly, from the authorization of wagering on electronic games of skill at the franchise holder’s racetrack park site under this chapter, if approved by the local voters at the election.

(iii) The franchise holder may make requests on one (1) or more occasions, and elections so requested from time to time by the franchise holder may be held during any one (1) or more calendar years as requested from time to time by the franchise holder, but not more than one (1) special election shall be held for such purposes by the same city, town, or county during any particular calendar year.

(iv) The cost incurred by the city, town, or county involved in conducting each special election pursuant to the franchise holder’s request shall be paid by the franchise holder. The election shall be held and conducted under the general election laws of the state, except as otherwise provided in this section.

(C) The ordinance shall set forth the ballot question substantially as follows:

“For wagering on electronic games of skill conducted by _____ [name of franchise holder] on the grounds of its racetrack park site in _____ [city, town, or county] []

Against wagering on electronic games of skill conducted by _____ [name of franchise holder] on the grounds of its racetrack park site in _____ [city, town, or county] []

As authorized by Arkansas Code Section 23-113-201, the question presented is whether or not wagering on electronic games of skill may be conducted by _____ [name of franchise holder] on the grounds of its racetrack park site in _____ [city, town, or county] under the provisions of Chapter 113 of Title 23 of the Arkansas Code. Vote for or against the question by marking the appropriate box above. ‘Electronic games of skill’ means games played through any electronic device or machine that afford an opportunity for the exercise of skill or judgment when the outcome is not completely controlled by chance alone.”

(D) Notice of the election shall be given by the clerk of the city, town, or county involved by one (1) publication in a newspaper having general circulation within the city, town, or county involved not less than ten (10) calendar days before the election. No other publication or posting of a notice by any other public official shall be required.

(E) The election shall be held no earlier than thirty-one (31) calendar days, and no later than one hundred twenty (120) calendar days, after the effective date of the ordinance in which the election is called by the governing body.

(F)(i) Within thirty (30) calendar days after completion of the tabulation of the votes, the mayor of the city or town or the county judge of the county, as the case may be, shall proclaim the results of the election by issuing a proclamation and publishing it one (1) time in a newspaper having general circulation within the city, town, or county involved.

(ii) The results of the election as stated in the proclamation shall be conclusive unless a suit contesting the proclamation is filed in the circuit court in the county where the election took place within twenty (20) calendar days after the date of publication of the proclamation.

(G) If the wagering on electronic games of skill is approved at any election as provided in this section, that approval shall be final and shall continue in effect thereafter as long as wagering on electronic games of skill at the location involved is authorized by the other provisions of this chapter, other than this section.

(b)(1) In order to conduct wagering on electronic games of skill during a calendar year, the franchise holder must have been licensed by the Arkansas Racing Commission to conduct a live racing meet within the calendar year or the immediately preceding calendar year of either:

(A) Horse racing under the Arkansas Horse Racing Law, § 23-110-101 et seq.; or

(B) Greyhound racing under the Arkansas Greyhound Racing Law, § 23-111-101 et seq.

(2) However, the commission may waive the requirement of subdivision (b)(1) of this section if the license was not issued because of events such as fire, storm, accident or other casualty, epidemic, shortages of horses or greyhounds, war, sabotage, acts of a public enemy, civil disturbances, strikes, labor disputes, work stoppages, or similar events.

(c)(1) Wagering on electronic games of skill conducted by a franchise holder in accordance with this chapter shall be lawful, notwithstanding any laws or parts of laws of the State of Arkansas to the contrary.

(2) However, this chapter is not intended to authorize a lottery or the sale of lottery tickets prohibited by Arkansas Constitution, Article 19, § 14.

(d)(1) In order to constitute an electronic game of skill under this chapter, the game must not be completely controlled by chance alone.

(2) A game is not completely controlled by chance alone if the betting public may attain through the exercise of skill or judgment a better measure of success in playing the game than could be mathematically expected on the basis of pure luck, that is, on the basis of pure random chance alone.

(e) For each electronic game of skill, the Arkansas Racing Commission shall provide by appropriate rule or regulation the specifications for establishing that patrons, in the aggregate, exercising some degree of skill or judgment, over the expected lifetime of the electronic game of skill, will obtain a payout of at least eighty-three percent (83%) of the aggregate amounts wagered on the electronic game of skill.

(f)(1) Prior to conducting wagering on an electronic game of skill, the franchise holder shall present to the Arkansas Racing Commission:

(A) A complete description of the game and the electronic device or machine to be utilized in the play of the game, the proposed rules of play, and such further information as the commission determines is necessary or appropriate in order to effectively carry out its regulatory functions in accordance with this chapter; and

(B) Evidence of anticipated economic benefits to the horse racing or greyhound racing industries in Arkansas, including Arkansas horse or greyhound farms and breeding operations and related agribusinesses, which may result, directly or indirectly, from the authorization of wagering on the electronic game of skill.

(2)(A) Within sixty (60) calendar days after the submission of the information required by subdivision (f)(1) of this section, the commission shall make a finding as to whether:

(i) The game and electronic device or machine constitutes an electronic game of skill authorized by this chapter; and

(ii) Economic benefits to the horse racing or greyhound racing industries in Arkansas, including Arkansas horse or greyhound farms and breeding operations and related agribusinesses, may result, directly or indirectly, from the authorization of wagering on the electronic game of skill.

(B) The finding shall further either approve the proposed rules of play or recommend modifications as the commission determines are necessary in the public interest in carrying out its regulatory functions in accordance with this chapter.

(3) The franchise holder may commence conducting wagering on the electronic game of skill subject to the other provisions of this chapter and other applicable rules of the commission adopted pursuant to this chapter if:

(A) The finding concludes that:

(i) Economic benefits to the horse racing or greyhound racing industries in Arkansas, including Arkansas horse or greyhound farms and breeding operations and related agribusinesses, may result, directly or indirectly, from the authorization of wagering on the electronic game of skill; and

(ii) The game and electronic device or machine constitutes an electronic game of skill authorized by this chapter; and

(B) The commission approves the rules of play or, if applicable, the franchise holder incorporates the changes recommended by the commission into the final rules of play.

(4) If the finding concludes that the game and electronic device or machine does not constitute an electronic game of skill authorized by this chapter, recommends changes in the proposed rules of play, or concludes that neither direct nor indirect economic benefits to the horse racing or greyhound racing industries in Arkansas, including Arkansas horse or greyhound farms and breeding operations and related agribusinesses, will result from the authorization of wagering on the

electronic game of skill, the commission shall provide the franchise holder with the opportunity for a hearing by the commission before the finding is made final by the commission.

(g) Wagers on electronic games of skill may be made only by individuals physically present at the location on the grounds of the franchise holder’s authorized racetrack park site as set forth in subsection (a) of this section where electronic games of skill are located and being operated in accordance with this chapter.

(h) No individual under twenty-one (21) years of age shall be intentionally allowed to place wagers on electronic games of skill, and the commission shall provide by rule or regulation appropriate supervisory procedures for franchise holders to follow in order to safeguard against individuals under twenty-one (21) years of age placing wagers on electronic games of skill.

History. Acts 2005, No. 1151, § 1.

CASE NOTES

Delegation of Authority.

Authority was not unlawfully delegated to the Arkansas Racing Commission when the legislature directed the Commission in subdivision (f)(2)(A)(i) of this section to

make a finding as to whether a game and electronic device or machine constituted an electronic game of skill. *Gallas v. Alexander*, 371 Ark. 106, 263 S.W.3d 494 (2007).

SUBCHAPTER 3 — ARKANSAS RACING COMMISSION

SECTION.

23-113-301. Jurisdiction of Arkansas Racing Commission.

23-113-302. Powers and duties.

SECTION.

23-113-303. Licenses for employees and suppliers.

23-113-304. Hearings.

Effective Dates. Acts 2007, No. 856, § 6: Apr. 3, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission is responsible for licensing individuals and businesses that wish to be involved in conducting electronic games of skill and thoroughbred horse and greyhound racing in the State of Arkansas; that there is an immediate need for the Arkansas Racing Commission to obtain state and federal background investigations for potential licensees; and that this act provides the

necessary authorization for the Arkansas Racing Commission to obtain the background investigations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-113-301. Jurisdiction of Arkansas Racing Commission.

Subject to the limitations and conditions in this chapter or other applicable law, the Arkansas Racing Commission shall have full administrative regulatory jurisdiction over the business of electronic games of skill and wagering thereon conducted by franchise holders under this chapter.

History. Acts 2005, No. 1151, § 1.

23-113-302. Powers and duties.

(a) In addition to all other duties, powers, and responsibilities conferred upon it by other laws of this state, the Arkansas Racing Commission shall exercise the duties, powers, and responsibilities over electronic games of skill and wagering on the electronic games of skill as authorized in this chapter, and without necessarily being limited to the following enumeration, but subject to the other provisions of this chapter, the commission shall:

(1) Regulate the specific games, devices, machines, and equipment played and utilized in connection with wagering on electronic games of skill and the rules of play and methods of operation thereof as contemplated by this chapter, as well as appropriate security and surveillance systems, in order to safeguard fairness and integrity in the conduct and operation of electronic games of skill and wagering on the electronic games of skill;

(2) Regulate the specific times of operation and specific areas on the premises of the franchise holder's racetrack park site where wagering on electronic games of skill may be conducted;

(3) Prescribe the procedures for issuing licenses to employees of the franchise holder conducting electronic games of skill and wagering on the electronic games of skill, including, without limitation, the information to be submitted by the individuals in connection with their background, employment, experience, and character, as reasonably necessary to determine the individuals' qualifications and suitability for the position;

(4) Prescribe the procedures for issuing licenses to persons supplying electronic games of skill to the franchise holder, including, without limitation, the information to be submitted by the persons in connection with their background, experience, character, business activities, and financial affairs, as reasonably necessary to determine the persons' qualifications and suitability for supplying electronic games of skill to franchise holders for use in accordance with this chapter;

(5) Have authority to enter upon the premises where electronic games of skill are being operated and to observe the conduct of wagering thereon; and

(6) Take such other action not inconsistent with law as the commission may deem necessary or desirable in order to supervise and regulate and to effectively control in the public interest the operation of

electronic games of skill and conduct of wagering thereon as authorized by this chapter.

(b) The commission may promulgate, revise, amend, and repeal rules, regulations, and orders, consistent with the policy, objects, and purposes of this chapter, as it reasonably deems necessary or desirable in the public interest in carrying out the provisions of this chapter.

History. Acts 2005, No. 1151, § 1.

23-113-303. Licenses for employees and suppliers.

(a) The Arkansas Racing Commission may require persons employed by the franchise holder in the conduct of wagering on electronic games of skill to obtain a license from the commission under procedures generally consistent with the licensing procedures otherwise applicable to other employees of the franchise holder engaged in the conduct of pari-mutuel wagering on horse racing or greyhound racing, as the case may be.

(b)(1) No person may sell or otherwise supply electronic games of skill to a franchise holder for the conduct of wagering thereon as authorized in this chapter or provide repair or other services to electronic games of skill unless the person has:

(A) Demonstrated to the satisfaction of the commission that the person has the capability and qualifications necessary to reasonably furnish the equipment and perform the services to be provided by the supplier; and

(B) Obtained a license from the commission.

(2) Each supplier shall pay to the commission an annual license fee in the amount of one thousand dollars (\$1,000) for each year or part thereof that the license is in effect.

(c)(1)(A) An applicant shall be fingerprinted to determine an applicant's suitability to be issued a franchise holder employee license, supplier license, or service license.

(B) The fingerprints shall be forwarded by the Arkansas Racing Commission to the Department of Arkansas State Police for statewide criminal and noncriminal background checks.

(C) After completion of the statewide criminal and noncriminal background check, the fingerprints shall be forwarded by the Department of Arkansas State Police to the Federal Bureau of Investigation for a national criminal history record check.

(2) The applicant shall sign a release that authorizes the:

(A) Department of Arkansas State Police to forward the applicant's fingerprint card to the Federal Bureau of Investigation for a national criminal history record check; and

(B) Release of the results of the statewide criminal and noncriminal background check and the national criminal history record check to the Arkansas Racing Commission.

(3)(A) Any information received by the Arkansas Racing Commission from the statewide criminal and noncriminal background check and

the national criminal history record check shall be kept confidential and may be used by the commission only for the purpose of determining the applicant's suitability to be licensed by the commission.

(B) The commission may disclose any information under subdivision (c)(3)(A) of this section to the applicant or the applicant's duly authorized representative.

(4) No statewide criminal and noncriminal background check or national criminal history record check shall be required of applicants for certain classes of licenses that have been exempted from investigation by rules promulgated by the Arkansas Racing Commission.

(5) The Arkansas Racing Commission shall promulgate rules to implement this subsection.

(d) Any person knowingly making a false statement on an employee or supplier license application under this chapter shall be guilty of a Class A misdemeanor.

History. Acts 2005, No. 1151, § 1; 2007, No. 856, § 5.

Amendments. The 2007 amendment inserted "or provide repair or other ser-

vices to electronic games of skill" in (b)(1); added (c); and redesignated former (c) as present (d).

23-113-304. Hearings.

(a)(1) If any franchise holder or other person is aggrieved by any action of the Arkansas Racing Commission, the franchise holder or other person shall be entitled to a hearing by the commission.

(2) The hearings shall be conducted in accordance with the rules and procedures governing other commission hearings.

(b)(1) At the conclusion of the hearing, the commission shall make its findings to be the basis for the action taken by the commission.

(2) The findings and orders of the commission shall be subject to review in the Pulaski County Circuit Court, from which an appeal may be taken to the Supreme Court.

History. Acts 2005, No. 1151, § 1.

SUBCHAPTER 4 — CONTRIBUTION TO PURSES AND PROMOTION OF ARKANSAS THOROUGHBRED AND GREYHOUND BREEDING ACTIVITIES

SECTION.

23-113-401. Contribution to purses and promotion of Arkansas

thoroughbred and greyhound breeding activities.

23-113-401. Contribution to purses and promotion of Arkansas thoroughbred and greyhound breeding activities.

(a) An amount equal to fourteen percent (14%) of the net wagering revenues from electronic games of skill shall be set aside by the franchise holder in a separate account and used only for purses for live horse racing or live greyhound racing conducted by the franchise holder, as the case may be.

(b) With respect to a franchise holder operating a franchise to conduct horse racing, an amount equal to one percent (1%) of the net wagering revenues from electronic games of skill conducted by the horse racing franchise holder shall be paid by the franchise holder to the Arkansas Racing Commission for deposit into the Arkansas Racing Commission Purse and Awards Fund to be used for purse supplements, breeders' awards, owners' awards, and stallion awards as provided in § 23-110-409 in order to promote and encourage thoroughbred horse breeding activities in Arkansas.

(c) With respect to a franchise holder operating a franchise to conduct greyhound racing, an amount equal to one percent (1%) of the net wagering revenues from electronic games of skill conducted by the greyhound racing franchise holder shall be paid by the franchise holder to the commission to be used for breeders' awards as provided in the commission's rules and regulations governing greyhound racing in Arkansas in order to promote and encourage greyhound breeding activities in Arkansas.

(d)(1) The dedication of net wagering revenues from electronic games of skill to purses and breeding activities as set forth in this section shall not be subject to any contract or agreement between the franchise holder and any organization representing horsemen or greyhound owners or trainers, to the end that any such contractual obligations for the use of moneys for purses shall not apply to the funds dedicated to purses and breeding activities as set forth in this section.

(2) The moneys dedicated to purses and breeding activities as set forth in this section are intended to be in addition to any such contractual purse obligations affecting moneys other than the amounts dedicated to purses and breeding activities as set forth in this section, as well as in addition to amounts required to be used for purses and breeding activities under applicable provisions of the Arkansas Horse Racing Law, § 23-110-101 et seq., and the Arkansas Greyhound Racing Law, § 23-111-101 et seq., as the case may be.

(e) The commission shall have jurisdiction to check and verify compliance by the franchise holder with the provisions of this section and shall make periodic determinations as to compliance under rules and regulations adopted by the commission.

History. Acts 2005, No. 1151, § 1.

SUBCHAPTER 5 — PRIVILEGE FEES

SECTION.

23-113-501. Privilege fees.

23-113-501. Privilege fees.

(a) Franchise holders conducting wagering on electronic games of skill under this chapter shall pay the following fees for the privilege of conducting the wagering:

(1) An amount equal to eighteen percent (18%) of the net wagering revenues from electronic games of skill shall be paid by the franchise holder to the Director of the Department of Finance and Administration for disposition under § 23-113-604;

(2) An amount equal to one-half of one percent (0.5%) of the net wagering revenues from electronic games of skill shall be paid by the franchise holder to the county in which the franchise holder is operating the electronic games of skill; and

(3) An amount equal to one and one-half percent (1.5%) of the net wagering revenues from electronic games of skill shall be paid by the franchise holder to the city or town in which the franchise holder is operating the electronic games of skill.

(b) The privilege fees shall be paid on a monthly basis pursuant to rules and procedures adopted by the director. It shall be the duty of a franchise holder on or before the twentieth day of each month to deliver to the director upon forms prescribed and furnished by the director a return under oath showing the total net wagering revenues from electronic games of skill during the preceding calendar month.

(c) The privilege fees levied by this section are in lieu of any state or local gross receipts, sales, or other similar taxes, and to this end the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., shall not be applicable to gross receipts derived by franchise holders from wagering on electronic games of skill.

(d) The privilege fee payable to the director under subdivision (a)(1) of this section shall be administered by the director pursuant to the Arkansas Tax Procedure Act, § 26-18-101 et seq. However, regulatory authority over licensing and other matters under this chapter not relating to the administration, payment, and collection of the privilege fee shall remain with the Arkansas Racing Commission.

History. Acts 2005, No. 1151, § 1.

SUBCHAPTER 6 — MISCELLANEOUS

SECTION.

23-113-601. Duty to maintain records.

23-113-602. Inconsistent statutes inapplicable.

23-113-603. Pari-mutuel wagering on horse racing and greyhound racing.

SECTION.

23-113-604. Disposition of privilege fees, license fees, etc.

23-113-601. Duty to maintain records.

A franchise holder operating electronic games of skill and conducting wagering thereon under this chapter shall keep a complete set of books and records as necessary to show fully the activities and transactions of the franchise holder with respect to the operations and wagering conducted in accordance with this chapter, and the Arkansas Racing Commission shall have reasonable access to the books and records in

order to verify compliance with the provisions of this chapter and the rules and regulations of the commission.

History. Acts 2005, No. 1151, § 1.

23-113-602. Inconsistent statutes inapplicable.

(a) Section 5-66-101 et seq. and all other laws and parts of laws inconsistent with any of the provisions of this chapter are expressly declared not to apply to any person engaged in, conducting, or otherwise participating in operating electronic games of skill or wagering thereon as authorized by this chapter.

(b) No person shall be guilty of any criminal offense set forth in § 5-66-101 et seq. or any other law relating to illegal gambling to the extent the person relied on any rule, order, finding, or other determination by the Arkansas Racing Commission that the activity was authorized by this chapter.

History. Acts 2005, No. 1151, § 1.

23-113-603. Pari-mutuel wagering on horse racing and greyhound racing.

(a) Pari-mutuel wagering on horse racing and greyhound racing, whether on live racing, simulcast racing, or races conducted in the past and rebroadcast by electronic means, shall continue to be governed by the Arkansas Horse Racing Law, § 23-110-101 et seq., and the Arkansas Greyhound Racing Law, § 23-111-101 et seq., respectively, and not by this chapter.

(b)(1) Provisions of the Arkansas Horse Racing Law, § 23-110-101 et seq., and the Arkansas Greyhound Racing Law, § 23-111-101 et seq., prohibiting wagering other than on horse or greyhound races and other than under the pari-mutuel or certificate method of wagering shall not apply to wagering on electronic games of skill conducted pursuant to this chapter, and to this end the provisions of §§ 23-110-405(d)(1) and (2), 23-111-508(b), 23-111-508(d)(1) and (2), 23-111-508(d)(4), and any other inconsistent provisions of the Arkansas Horse Racing Law, § 23-110-101 et seq., and the Arkansas Greyhound Racing Law, § 23-111-101 et seq., shall not apply to wagering on electronic games of skill conducted in accordance with this chapter.

(2) Wagering under this chapter is not required to be pari-mutuel.

History. Acts 2005, No. 1151, § 1.

23-113-604. Disposition of privilege fees, license fees, etc.

(a) All privilege fees received by the Director of the Department of Finance and Administration under this chapter for the benefit of the state shall be deposited into the State Treasury as general revenues.

(b) All permit or license fees, penalties, and fines received by the Arkansas Racing Commission under this chapter shall be deposited into the State Treasury as general revenues.

History. Acts 2005, No. 1151, § 1.

CHAPTER 114

CHARITABLE BINGO AND RAFFLES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ADMINISTRATION.
3. LICENSING.
4. OPERATION OF GAMES OF BINGO AND RAFFLES.
5. BINGO AND RAFFLE ACCOUNTS.
6. EXCISE TAX.
7. ENFORCEMENT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 23-114-101. Short title.
23-114-102. Definitions.

SECTION.

- 23-114-103. General provisions.
23-114-104. Penalty.

Effective Dates. Acts 2009, No. 499, § 13: Mar. 24, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law imposes a burdensome tax on licensed authorized bingo organizations, that the tax produces revenues that far exceed funds necessary to administer and enforce bingo and raffle laws in this state, and that the tax should be reduced as soon as possible to relieve the burden on licensed authorized organizations and advance the

charitable interests served by bingo games. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-114-101. Short title.

This chapter shall be known and may be cited as the “Charitable Bingo and Raffles Enabling Act”.

History. Acts 2007, No. 388, § 1.

23-114-102. Definitions.

As used in this chapter:

(1)(A) "Authorized organization" means an organization eligible for a license to conduct games of bingo and raffles that is a nonprofit tax-exempt religious, educational, veterans, fraternal, service, civic, medical, volunteer rescue service, volunteer firefighters organization, or volunteer police organization that has been in continuing existence as a nonprofit tax-exempt organization in this state for a period of not less than five (5) years immediately prior to conducting the game of bingo or raffles.

(B) A nonprofit tax-exempt instrumentality of the United States Government is a service agency for the purpose of this subdivision (1);

(2)(A) "Bingo equipment" means equipment and supplies used, made, or sold for the purpose of use in bingo.

(B) "Bingo equipment" includes:

(i) A machine or other device from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called;

(ii) A bingo face;

(iii) A bingo ball; and

(iv) Any other device commonly used in the direct operation of a bingo game.

(C) "Bingo equipment" is not intended and shall not be construed to permit the participants to play the game through:

(i) Any electronic device or machine; or

(ii) A pull-tab bingo ticket.

(D) "Bingo equipment" does not include:

(i) A bingo game set commonly manufactured and sold as a child's game for a retail price of twenty dollars (\$20.00) or less, unless the set or a part of the set is used in a game of bingo subject to regulation under this chapter; or

(ii) A commonly available component part of bingo equipment such as a light bulb or fuse;

(3) "Bingo face" means a disposable flat piece of paper that may be used one (1) time and that cannot be reused after the game in which the bingo face was used has ended. The bingo face is marked off into any number of squares in any arrangement of rows, with each square being designated by number, letter, or combination of numbers and letters, and with one (1) or more squares designated as a "free" space;

(4) "Bingo session" means all activities incidental to the conduct of a series of games of bingo by a licensed authorized organization, beginning when the first game of bingo of a bingo session is commenced by calling the first bingo ball drawn, such session not to exceed five (5) consecutive hours during any one (1) twenty-four-hour calendar day;

(5) "Charitable purpose" means a purpose described by § 23-114-504;

(6) "Department" means the Department of Finance and Administration;

(7) "Director" means the Director of the Department of Finance and Administration;

(8) "Distributor" means a person or business entity that sells, markets, or otherwise provides bingo equipment to a licensed authorized organization;

(9)(A) "Game of bingo" means a single game of the activity commonly known as "bingo" in which the participants pay a sum of money for the use of one (1) or more bingo faces.

(B) "Game of bingo" includes only a game in which the winner receives a preannounced, fixed-dollar prize and in which the winner is determined by the matching of letters and numbers on a bingo face imprinted with at least twenty-four (24) numbers, with letters and numbers appearing on objects randomly drawn and announced by a caller, in contemporaneous competition among all players in the game;

(10) "Gross receipts" means the total amount received from the sale of raffle tickets and the sale, rental, transfer, or use of bingo faces and entrance fees charged at premises at which games of bingo or raffles are conducted without any deduction on account of prizes paid, losses, or any other expenses whatsoever;

(11) "Licensed authorized organization" means an authorized organization that holds a license to conduct games of bingo or raffles;

(12) "Manufacturer" means a person or business entity that produces finished bingo equipment from raw materials, supplies, or subparts and that sells, markets, or otherwise provides such equipment to a licensed distributor;

(13) "Person" means any individual, company, partnership, limited liability company, joint venture, joint agreement, association, mutual or otherwise, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other private entity;

(14) "Premises" means the area subject to the direct control of and actual use by a licensed authorized organization to conduct games of bingo. "Premises" includes a location or place;

(15) "Primary business office" means the Arkansas location at which all records relating to the primary purpose of a licensed authorized organization are maintained in the ordinary course of business;

(16)(A) "Raffle" means the selling of tickets to win a prize awarded through a random drawing.

(B) "Raffle" does not include any game played through the use of a machine or electronic device; and

(17) "Responsible person" means the person or persons within a licensed authorized organization that are responsible for organizing, conducting, and otherwise administering the licensed authorized organization's raffles or bingo sessions.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 1.

Amendments. The 2009 amendment redesignated (1)(E) as (3) and redesign-

ated the subsequent subdivisions accordingly; deleted "with the word 'Arkansas' and a facsimile outline of a map of Arkansas on the space" following "'free space" in

(3); subdivided (16); deleted (17); and made related and minor stylistic changes.

23-114-103. General provisions.

(a) The game of bingo or a raffle conducted by a licensed authorized organization shall not be a lottery prohibited by Arkansas Constitution, Article 19, § 14, if all net receipts over and above the actual cost of conducting the game of bingo or raffle are used only for charitable, religious, or philanthropic purposes.

(b)(1) No net receipts from games of bingo or raffles shall be used to compensate in any manner any person who works for or is in any way affiliated with the licensed authorized organization.

(2)(A) Charitable bingo or raffles shall only be conducted by a licensed authorized organization through its bona fide officers and members who volunteer their time and receive no compensation for their services.

(B) A licensed authorized organization shall not conduct games of bingo or raffles through any agent or third party.

(c) The provisions of this chapter are not intended and shall not be construed to allow the play of games of bingo or raffles through any electronic device or machine.

History. Acts 2007, No. 388, § 1.

23-114-104. Penalty.

(a)(1) A violation of this chapter by a licensed authorized organization is a violation punishable by a fine not to exceed five thousand dollars (\$5,000).

(2) A second or subsequent offense is a violation punishable by a fine not to exceed ten thousand dollars (\$10,000).

(b) A person who conducts a game of bingo or a raffle without a license under this chapter shall be subject to the same penalties as provided under § 5-66-118, concerning lotteries.

History. Acts 2007, No. 388, § 1; 2009, No. 164, § 16. substituted “a violation” for “an unclassified misdemeanor and shall be” in (a)(1)

Amendments. The 2009 amendment and (a)(2).

SUBCHAPTER 2 — ADMINISTRATION

SECTION.

23-114-201. Control and supervision of games of bingo and raffles.

23-114-202. Approval of bingo faces and raffle tickets.

SECTION.

23-114-203. Rulemaking authority.

Effective Dates. Acts 2009, No. 499, § 13: Mar. 24, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Ar-

kansas that current Arkansas law imposes a burdensome tax on licensed authorized bingo organizations, that the tax produces revenues that far exceed funds necessary to administer and enforce bingo and raffle laws in this state, and that the tax should be reduced as soon as possible to relieve the burden on licensed authorized organizations and advance the charitable interests served by bingo games. Therefore, an emergency is de-

clared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-114-201. Control and supervision of games of bingo and raffles.

(a) The Director of the Department of Finance and Administration shall administer this chapter under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b) The director has authority over all games of bingo and raffles conducted in this state so that games of bingo and raffles are fairly conducted and the proceeds derived from games of bingo and raffles are used only for an authorized purpose.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 2.

Amendments. The 2009 amendment substituted "authority" for "broad author-

ity and shall exercise strict control and close supervision" in (b); deleted (c); and made related and minor stylistic changes.

23-114-202. Approval of bingo faces and raffle tickets.

(a) The Director of the Department of Finance and Administration by rule shall provide for the form of bingo faces and raffle tickets used in the State of Arkansas.

(b)(1) All bingo faces must be purchased by the licensed authorized organization from a distributor licensed under this chapter.

(2) Only one (1) game shall be played on each bingo face.

(c)(1) All bingo faces and raffle tickets shall be preprinted on paper or plastic.

(2) Electronic devices, machines, or facsimiles shall not be used as bingo faces, raffle tickets, or otherwise, by participants of games of bingo or raffles conducted under this chapter.

(d) All bingo faces and raffle tickets shall be sequentially numbered at the time of printing.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 3.

Amendments. The 2009 amendment, in (a), substituted "for the form of" for "procedures for the approval of" and inserted "used in the State of Arkansas"; in

(b), deleted (b)(1) and redesignated the subsequent subdivisions accordingly; subdivided (c) and deleted "in a form approved by the director" following "plastic" in (c)(1); and made minor stylistic changes.

23-114-203. Rulemaking authority.

The Director of the Department of Finance and Administration may adopt rules to aid in the enforcement and administration of this chapter.

History. Acts 2007, No. 388, § 1.

SUBCHAPTER 3 — LICENSING

SECTION.

- 23-114-301. Authorized organization license.
- 23-114-302. License fees — Authorized organizations.
- 23-114-303. License application — Authorized organizations.
- 23-114-304. License application — Distributors and manufacturers.

SECTION.

- 23-114-305. Denial, suspension, or revocation of licenses.
- 23-114-306. Display of license.
- 23-114-307. Licenses and fees — Distributors and manufacturers.
- 23-114-308. [Repealed.]

Effective Dates. Acts 2009, No. 499, § 13: Mar. 24, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law imposes a burdensome tax on licensed authorized bingo organizations, that the tax produces revenues that far exceed funds necessary to administer and enforce bingo and raffle laws in this state, and that the tax should be reduced as soon as possible to relieve the burden on licensed authorized organizations and advance the

charitable interests served by bingo games. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-114-301. Authorized organization license.

The Department of Finance and Administration may license an entity that is an authorized organization.

History. Acts 2007, No. 388, § 1.

23-114-302. License fees — Authorized organizations.

(a) An authorized organization license to conduct games of bingo and raffles may be issued to an authorized organization and is subject to renewal on an annual basis. The annual fee for this license shall be one hundred dollars (\$100).

(b) In lieu of the annual license issued under subsection (a) of this section, an authorized organization, at its request, may be issued one (1) or more of the following temporary authorized organization licenses:

(1) A temporary license to conduct one (1) bingo session. The fee for this temporary license is twenty-five dollars (\$25.00);

(2) A temporary license, to be known as a “Class I temporary raffle license”, to conduct one (1) raffle other than a raffle under subdivision (b)(3) of this section. The fee for this temporary license is twenty-five dollars (\$25.00); and

(3) A temporary license, to be known as a “Class II temporary raffle license”, to conduct one (1) raffle in which the total prize package to be given away has been donated and has a total value of less than five thousand dollars (\$5,000). The fee for this temporary license is ten dollars (\$10.00).

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 4. increased the total value of the prize package from less than \$500 to less than \$5,000.

Amendments. The 2009 amendment

23-114-303. License application — Authorized organizations.

(a) An applicant for an authorized organization license shall file a written verified application with the Department of Finance and Administration on a form prescribed by the Department of Finance and Administration.

(b) The license application shall include:

(1) The name and address of the applicant;

(2) A designation and address of the premises intended to be used for a raffle or bingo session;

(3) The name and address of the person or persons within the authorized organization who will be responsible for organizing, conducting, and otherwise administering the raffle or bingo sessions;

(4) If the premises upon which a raffle or bingo session will be conducted has been leased by the authorized organization, a copy of the lease agreement; and

(5) A statement that the applicant complies with the conditions for eligibility for the license.

(c) The responsible person within an authorized organization shall meet the following requirements:

(1) The responsible person shall not have been found guilty of or pleaded guilty or no contest to:

(A) Any felony by any court in the State of Arkansas; or

(B) Any similar offense by a court in another state or of any similar offense by a military or federal court;

(2)(A) In order to determine a responsible person’s suitability to organize, conduct, and administer raffles and bingo sessions, the Director of the Department of Finance and Administration may require that the responsible person be fingerprinted and the fingerprints forwarded for a criminal background check through the Department of Arkansas State Police.

(B) After the completion of the criminal background check through the Department of Arkansas State Police, the fingerprints shall be forwarded by the Department of Arkansas State Police to the Federal Bureau of Investigation for a national criminal history record check; and

(3) The responsible person shall sign a release that allows the Department of Arkansas State Police to release:

(A) An Arkansas noncriminal justice background check to the Department of Finance and Administration; and

(B) A fingerprint card of the applicant to the Federal Bureau of Investigation to allow a federal fingerprint-based background check to be performed.

(d)(1) Before the renewal of an annual license, the licensed authorized organization shall report the following information:

(A) The amount of the total gross receipts derived from games of bingo and raffles;

(B) The net proceeds derived from games of bingo and raffles;

(C) The use to which the proceeds have been or are to be applied; and

(D) If requested by the director, a list of expenses paid or incurred.

(2) A licensed authorized organization shall maintain records to substantiate the contents of the report required by this subsection.

History. Acts 2007, No. 388, § 1; 2009, substituted “organization” for “agent” in No. 164, §§ 17, 18.

(b)(4); and inserted “licensed” in (d)(1).

Amendments. The 2009 amendment

23-114-304. License application — Distributors and manufacturers.

(a) An applicant for a distributor license or a manufacturer license shall file a written verified application with the Department of Finance and Administration on a form prescribed by the department.

(b) The license application shall include:

(1) The name, address, and federal employer identification number of the applicant;

(2) The names and positions of the applicant’s officers;

(3) The name and address of the person or persons who are responsible for the applicant’s sales of bingo equipment; and

(4) A statement that the applicant complies with the conditions for eligibility for the license.

(c) The person or persons who are responsible for the applicant’s sales of bingo equipment shall meet the following requirements:

(1) The person or persons shall not have been found guilty of or pleaded guilty or no contest to:

(A) Any felony by any court in the State of Arkansas; or

(B) Any similar offense by a court in another state or of any similar offense by a military or federal court;

(2)(A) In order to determine the person's or persons' suitability to be involved in the sale of bingo equipment, the Director of the Department of Finance and Administration may require that the person or persons be fingerprinted and the fingerprints forwarded for a criminal background check through the Department of Arkansas State Police.

(B) After the completion of the criminal background check through the Department of Arkansas State Police, the fingerprints shall be forwarded by the Department of Arkansas State Police to the Federal Bureau of Investigation for a national criminal history record check; and

(3) The person or persons responsible for an applicant's sales of bingo equipment shall sign a release that allows the Department of Arkansas State Police to release the following:

(A) An Arkansas noncriminal justice background check to the Department of Finance and Administration; and

(B) A fingerprint card of the applicant to the Federal Bureau of Investigation to allow a federal fingerprint-based background check to be performed.

History. Acts 2007, No. 388, § 1.

23-114-305. Denial, suspension, or revocation of licenses.

(a) All proceedings for the suspension and revocation of the license issued to a manufacturer, a distributor, or an authorized organization under this chapter shall be before the Department of Finance and Administration.

(b) The department may deny an application for a license, or for the renewal of a license issued under this chapter if it determines that issuing the license would violate any provisions of this chapter.

(c) The proceedings shall be conducted in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 2007, No. 388, § 1.

23-114-306. Display of license.

A licensed authorized organization shall conspicuously display a license issued under this chapter at the premises at which a raffle or a game of bingo is conducted at all times during the conduct of the raffle or the game of bingo.

History. Acts 2007, No. 388, § 1.

23-114-307. Licenses and fees — Distributors and manufacturers.

(a) A distributor license may be issued to a distributor of bingo equipment and is subject to renewal on an annual basis. The annual fee for this license shall be two thousand five hundred dollars (\$2,500).

(b) A manufacturer license may be issued to a manufacturer of bingo equipment and is subject to renewal on an annual basis. The annual fee for this license shall be two thousand five hundred dollars (\$2,500).

History. Acts 2007, No. 388, § 1.

23-114-308. [Repealed.]

Publisher's Notes. This section, concerning failure to file excise tax reports, was repealed by Acts 2009, No. 499, § 5.

The section was derived from Acts 2007, No. 388, § 1.

SUBCHAPTER 4 — OPERATION OF GAMES OF BINGO AND RAFFLES

SECTION.

- 23-114-401. Bingo premises — Sale of raffle tickets.
- 23-114-402. Restrictions on premises and equipment providers.
- 23-114-403. Compensation prohibited.
- 23-114-404. Admission to games of bingo.

SECTION.

- 23-114-405. Raffle and bingo records.
- 23-114-406. Gift certificates.
- 23-114-407. Bingo sessions.
- 23-114-408. Prizes.
- 23-114-409. Purchase of bingo equipment.

Effective Dates. Acts 2009, No. 499, § 13: Mar. 24, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law imposes a burdensome tax on licensed authorized bingo organizations, that the tax produces revenues that far exceed funds necessary to administer and enforce bingo and raffle laws in this state, and that the tax should be reduced as soon as possible to relieve the burden on licensed authorized organizations and advance the

charitable interests served by bingo games. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-114-401. Bingo premises — Sale of raffle tickets.

(a)(1) Games of bingo shall not be conducted at more than one (1) premises on property owned or leased by a licensed authorized organization.

(2)(A) No more than two (2) organizations may conduct bingo games at the same premises so long as that premises is owned or leased by a licensed authorized organization.

(B) No more than four (4) bingo sessions shall be conducted at the same premises during any one (1) calendar week.

(3) Games of bingo under this chapter shall not be conducted through any system that links the games of bingo or participants at one (1) premises location to any other premises or participants.

(4) All participants in games of bingo shall be physically present in person at the authorized premises in a single facility in order to play a game of bingo under this chapter.

(b)(1) The conduct of raffles is not limited to property owned or leased by a licensed authorized organization, but shall be conducted pursuant to the rules of the Department of Finance and Administration.

(2) Raffle tickets may be sold:

(A) At the authorized premises of the licensed authorized organization; and

(B) Off the authorized premises of the licensed authorized organization if the tickets are sold by uncompensated volunteers of the licensed authorized organization.

(3) No raffle ticket shall be sold through the mail or through the Internet, email, fax, telephone, or any other electronic means.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 6.

Amendments. The 2009 amendment rewrote (a)(2), which read: "The Depart-

ment of Finance and Administration shall not license more than one (1) organization to conduct games of bingo at the same premises."

23-114-402. Restrictions on premises and equipment providers.

A person shall not lease or otherwise make a premises or equipment available for conducting a raffle or a game of bingo for any direct or indirect consideration in excess of the bona fide reasonable fair market rental value of the premises or equipment, and no portion of the consideration for premises or equipment shall be based upon a percentage or specified portion of the revenue or profit from games of bingo or raffles conducted by a licensed authorized organization.

History. Acts 2007, No. 388, § 1.

23-114-403. Compensation prohibited.

No person may be compensated for organizing, promoting, conducting, or otherwise administering a charitable raffle or bingo event. The functions of organizing, promoting, conducting, or otherwise administering a charitable raffle or bingo event shall be performed by volunteers from the charitable organization.

History. Acts 2007, No. 388, § 1.

23-114-404. Admission to games of bingo.

(a) A person shall not be denied admission to a raffle or a game of bingo or the opportunity to participate in a raffle or a game of bingo because of race, color, creed, religion, national origin, sex, or disability or because the person is not a member of the licensed authorized organization conducting the raffle or game of bingo.

(b) No individual under eighteen (18) years of age may play a game of bingo or purchase raffle tickets from a licensed authorized organization.

History. Acts 2007, No. 388, § 1.

23-114-405. Raffle and bingo records.

(a)(1) A licensed authorized organization shall provide to the Director of the Department of Finance and Administration at the time of application for license the address of its primary business office.

(2) If the licensed authorized organization maintains its raffle and bingo records at a location other than the primary business office, the licensed authorized organization shall provide the address of the location where the records are maintained.

(b) Bingo and raffle records shall be maintained in Arkansas in accordance with generally accepted accounting practices.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 7. subdivided (a); inserted “in accordance with generally accepted accounting practices” in (b); and deleted (c).

Amendments. The 2009 amendment

23-114-406. Gift certificates.

(a) Nothing in this chapter prohibits a licensed authorized organization from selling or redeeming a gift certificate that entitles the bearer of the certificate to participate in a raffle or play a game of bingo conducted by the licensed authorized organization.

(b) A licensed authorized organization that sells or redeems a gift certificate shall keep adequate records relating to the gift certificate.

History. Acts 2007, No. 388, § 1.

23-114-407. Bingo sessions.

(a)(1) A bingo session begins when the first game of bingo of the bingo session is commenced by calling the first bingo ball drawn.

(2) A licensed authorized organization may conduct one (1) bingo session per calendar day and shall not exceed two (2) bingo sessions during any one (1) calendar week.

(b) A bingo session shall not exceed five (5) consecutive hours during any one (1) twenty-four-hour calendar day.

History. Acts 2007, No. 388, § 1.

23-114-408. Prizes.

(a) A bingo prize shall not have a value of more than one thousand dollars (\$1,000) for a single game.

(b) For the total prizes of all games of bingo, a licensed authorized organization shall not offer or award during a single bingo session prizes with an aggregate value of more than seven thousand five hundred dollars (\$7,500).

(c)(1) A licensed authorized organization shall not award or offer to award a door prize with a value of more than two hundred fifty dollars (\$250) per bingo session.

(2) The value of the door prize under subdivision (c)(1) of this section shall not accrue against the bingo session prize limitation of seven thousand five hundred dollars (\$7,500).

(d)(1) A bingo prize, other than cash, may be merchandise with a recognized wholesale cost not to exceed one thousand dollars (\$1,000).

(2) A copy of the receipt for merchandise under subdivision (d)(1) of this section shall be maintained in the licensed authorized organization's bingo records.

(e)(1) Except as otherwise provided in subdivision (e)(2) of this section, the total value of raffle prizes in a calendar year shall not exceed fifty thousand dollars (\$50,000).

(2) If the prizes were donated to the licensed authorized organization, the total value of raffle prizes in a calendar year shall not exceed one hundred thousand dollars (\$100,000), except as applicable to a temporary license to conduct a raffle under § 23-114-302(b)(3).

(f)(1) A raffle prize shall not exceed five thousand dollars (\$5,000) in cash.

(2) As used in this subsection, "cash" means coins, paper currency, or a negotiable instrument that represents and is readily convertible to coins or paper currency.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 8.

thousand dollars (\$5,000)" for "five hundred dollars (\$500)" in (f)(1); and made minor stylistic changes.

Amendments. The 2009 amendment subdivided (c) and (d); substituted "five

23-114-409. Purchase of bingo equipment.

Licensed authorized organizations shall purchase bingo equipment only from distributors licensed under this chapter. Distributors that wish to sell bingo equipment to licensed authorized organizations within this state shall purchase bingo equipment only from manufacturers licensed under this chapter.

History. Acts 2007, No. 388, § 1.

SUBCHAPTER 5 — BINGO AND RAFFLE ACCOUNTS

SECTION.

- 23-114-501. Bingo and raffle accounts.
- 23-114-502. Withdrawals from a bingo and raffle account.
- 23-114-503. Authorized uses of a bingo and raffle account.
- 23-114-504. Use of net proceeds for charitable purposes.

SECTION.

- 23-114-505. Use of proceeds by a licensed authorized organization.
- 23-114-506. Items of bingo and raffle expense.
- 23-114-507. Expenses paid from bingo and raffle account.

Effective Dates. Acts 2009, No. 499, § 13: Mar. 24, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law imposes a burdensome tax on licensed authorized bingo organizations, that the tax produces revenues that far exceed funds necessary to administer and enforce bingo and raffle laws in this state, and that the tax should be reduced as soon as possible to relieve the burden on licensed authorized organizations and advance the

charitable interests served by bingo games. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-114-501. Bingo and raffle accounts.

(a)(1) A licensed authorized organization with gross receipts from raffles or games of bingo in excess of five hundred dollars (\$500) per month shall establish and maintain one (1) regular checking account designated as the bingo and raffle account.

(2) A licensed authorized organization may also maintain an interest-bearing savings account designated as the bingo and raffle savings account.

(b)(1) A licensed authorized organization shall deposit into the bingo and raffle account all funds derived from the conduct of games of bingo and raffles, less the amount awarded as cash prizes. Except as provided by subdivision (b)(2) of this section, a deposit shall be made not later than the next business day after the day of the raffle or bingo session on which the receipts were obtained.

(2) A licensed authorized organization may deposit funds derived from the conduct of a raffle or games of bingo that are paid through a debit card transaction into the bingo fund not later than seventy-two (72) hours after the transaction.

(c)(1) A licensed authorized organization may lend money from its general fund to its bingo and raffle account.

(2) Except as provided by this section, no other funds may be deposited into the bingo and raffle account.

(d) Except as provided in subsection (c) of this section, a licensed authorized organization shall not commingle gross receipts derived from the conduct of games of bingo and raffles with other funds of the organization.

(e) Except as permitted, the licensed authorized organization shall not transfer gross receipts to another account maintained by the licensed authorized organization.

(f) A licensed authorized organization shall maintain all of its savings and checking accounts established under this section in a financial institution in this state.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 9.

Amendments. The 2009 amendment subdivided (c), and deleted “if the organization requests and receives the prior ap-

proval of the Department of Finance and Administration” in (c)(1); inserted “Except as provided in subsection (c) of this section” in (d); and made related changes.

23-114-502. Withdrawals from a bingo and raffle account.

(a)(1) Funds from the bingo and raffle account shall be withdrawn by preprinted, consecutively numbered checks or withdrawal slips, signed by an authorized representative of the licensed authorized organization and made payable to a person.

(2) A check or withdrawal slip shall not be made payable to “cash”, “bearer”, or a fictitious payee.

(3) The nature of the payment made shall also be noted on the face of the check or withdrawal slip.

(b) The checks for the bingo and raffle account shall be imprinted with the words “Bingo and Raffle Account” and shall contain the licensed authorized organization’s bingo and raffle license number on the face of each check.

(c) A licensed authorized organization shall keep and account for all checks and withdrawal slips, including voided checks and withdrawal slips.

History. Acts 2007, No. 388, § 1.

23-114-503. Authorized uses of a bingo and raffle account.

(a) A licensed authorized organization may draw a check on the licensed authorized organization’s bingo and raffle account only for:

(1) The payment of necessary and reasonable bona fide bingo-related and raffle-related expenses;

(2) The disbursement of net proceeds derived from the conduct of games of bingo or raffles to charitable purposes; or

(3) The transfer of net proceeds derived from the conduct of games of bingo or raffles to the licensed authorized organization’s bingo and raffle savings account pending a disbursement to a charitable purpose.

(b) A licensed authorized organization shall make the disbursement of net proceeds on deposit in the bingo and raffle savings account to a

charitable purpose by transferring the intended disbursement back into the licensed authorized organization's bingo and raffle account and then withdrawing an amount by a check drawn on the bingo and raffle account.

History. Acts 2007, No. 388, § 1.

23-114-504. Use of net proceeds for charitable purposes.

(a) A licensed authorized organization shall devote to the charitable purposes of the licensed authorized organization its net proceeds of games of bingo and raffles.

(b) Except as otherwise provided by law, the net proceeds derived from games of bingo and raffles are dedicated to the charitable purposes of the licensed authorized organization only if directed to a cause, need, or activity that is consistent with the federal tax exemption the licensed authorized organization obtained under 26 U.S.C. § 501, as in existence on January 1, 2007, and under which the organization qualifies as a nonprofit organization as defined by law. If the licensed authorized organization is not required to obtain a federal tax exemption under 26 U.S.C. § 501, as in existence on January 1, 2007, the licensed authorized organization's net proceeds are dedicated to the charitable purposes of the licensed authorized organization only if directed to a cause, need, or activity that is consistent with the purposes and objectives for which the licensed authorized organization qualifies as a licensed authorized organization.

(c)(1) The licensed authorized organization shall make mandatory annual or more frequent disbursements from the bingo and raffle account to the general fund of the licensed authorized organization after providing for appropriate reserves and funds necessary to pay for reasonable and necessary bingo and raffle expenses.

(2) Once funds are distributed to the licensed authorized organization general fund under subdivision (c)(1) of this section, no funds shall be returned to the bingo and raffle account except by means of a loan from the licensed authorized organization's general fund to the bingo and raffle account as evidenced by a written instrument.

History. Acts 2007, No. 388, § 1.

23-114-505. Use of proceeds by a licensed authorized organization.

A licensed authorized organization shall not use the net proceeds from games of bingo or raffles directly or indirectly to:

- (1) Support or oppose a candidate or slate of candidates for public office;
- (2) Support or oppose a measure submitted to a vote of the people; or
- (3) Influence or attempt to influence legislation.

History. Acts 2007, No. 388, § 1.

23-114-506. Items of bingo and raffle expense.

(a) Expenses that are reasonable and necessary to lawfully conduct games of bingo or raffles are allowable and include expenses incurred for:

- (1) Advertising, including the cost of printing bingo and raffle gift certificates;
- (2) Repairs to premises and equipment;
- (3) Bingo and raffle supplies and equipment;
- (4) Prizes;
- (5) Stated rental or mortgage and insurance expenses;
- (6) License fees; and
- (7) Bookkeeping or accounting services.

(b) No person may be compensated for organizing, promoting, conducting, or otherwise administering a raffle or bingo event. Any such compensation is prohibited under this chapter and is not an allowable expense.

History. Acts 2007, No. 388, § 1.

23-114-507. Expenses paid from bingo and raffle account.

The following items of expenses incurred or paid in connection with the conduct of games of bingo or raffles must be paid from a licensed authorized organization’s bingo and raffle account if the licensed authorized organization is required under § 23-114-501 to maintain such an account:

- (1) Advertising, including the cost of printing bingo and raffle gift certificates;
- (2) Repairs to premises and equipment;
- (3) Bingo and raffle supplies and equipment;
- (4) Prizes;
- (5) Stated rental or mortgage and insurance expenses;
- (6) Bookkeeping or accounting services; and
- (7) License fees.

History. Acts 2007, No. 388, § 1.

SUBCHAPTER 6 — EXCISE TAX

SECTION.	SECTION.
23-114-601. Tax levied.	23-114-605. Collection and disbursement
23-114-602. Payment and reporting of tax.	of excise tax and license fees.
23-114-603. Information to be reported.	23-114-606. Nonfiler tax assessments.
23-114-604. [Repealed.]	

Effective Dates. Acts 2009, No. 499, § 13: Mar. 24, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Ar-

kansas that current Arkansas law imposes a burdensome tax on licensed authorized bingo organizations, that the tax produces revenues that far exceed funds necessary to administer and enforce bingo and raffle laws in this state, and that the tax should be reduced as soon as possible to relieve the burden on licensed authorized organizations and advance the charitable interests served by bingo games. Therefore, an emergency is de-

clared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-114-601. Tax levied.

(a) There is levied an excise tax of three-tenths of one cent (0.3¢) upon the sale of each bingo face sold by a licensed distributor to a licensed authorized organization in this state.

(b) Items taxed under subsection (a) of this section shall be exempt from the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 10.

A.C.R.C. Notes. As amended by Acts 2009, No. 499, § 10, subsection (a) reads as follows: "There is levied an excise tax of three tenths of one cent (.003¢) upon the sale of each bingo face sold by a licensed distributor organization in this state." The occurrence of "(.003¢)" instead of "(0.3¢)" following "three-tenths of one

cent" appears to be result of a typographical error.

Publisher's Notes. This note is being set out to correct an error in the 2009 supplement.

Amendments. The 2009 amendment, in (a), deleted (a)(2), redesignated the remaining subdivision accordingly, and substituted "three-tenths of one cent (0.3¢)" for "one cent (1¢)."

23-114-602. Payment and reporting of tax.

(a) The excise tax levied under this subchapter is due and payable by distributors that sold bingo faces to licensed authorized organizations in this state. The tax shall be reported and paid to the Department of Finance and Administration monthly on or before the fifteenth day of the month following the month of sale.

(b) The report shall be filed under oath on forms prescribed by the Director of the Department of Finance and Administration.

(c) The director shall adopt any rules necessary for the proper reporting and payment of the tax.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 10.

Amendments. The 2009 amendment

deleted "and other bingo equipment" following "bingo faces" in (a).

23-114-603. Information to be reported.

(a) The excise tax report required under § 23-114-602 shall include the following information:

(1) The total number of bingo faces sold to all licensed authorized organizations in this state; and

(2) Any other information that the Director of the Department of Finance and Administration determines is necessary to properly administer the excise tax levied by this subchapter.

(b) A taxpayer shall maintain records to substantiate the contents of each report.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 10.

deleted “and the gross receipts derived from the sale of other bingo equipment” following “bingo faces” in (a)(1).

Amendments. The 2009 amendment

23-114-604. [Repealed.]

Publisher’s Notes. This section, concerning record of prize winners, was repealed by Acts 2009, No. 499, § 10. The

section was derived from Acts 2007, No. 388, § 1.

23-114-605. Collection and disbursement of excise tax and license fees.

The Department of Finance and Administration shall deposit the revenue collected from the license fees levied under §§ 23-114-302 and 23-114-307, and the excise tax levied in § 23-114-601 to the credit of the General Revenue Fund Account of the State Apportionment Fund.

History. Acts 2007, No. 388, § 1.

23-114-606. Nonfiler tax assessments.

(a) If a distributor fails to file an excise tax report required under this chapter, the Department of Finance and Administration shall make an excise tax assessment for the period or periods for which the distributor failed to report.

(b) The estimate shall be based on any information covering any period possessed by the department.

(c) On the basis of the department’s estimate, the department shall compute and determine the amount of excise tax required to be paid along with any applicable interest and penalties authorized under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 2007, No. 388, § 1.

SUBCHAPTER 7 — ENFORCEMENT

SECTION.

- 23-114-701. Revocation of license — Licensed authorized organization.
- 23-114-702. Revocation of license — Distributors and manufacturers.

SECTION.

- 23-114-703. Inspection of premises.
- 23-114-704. Injunction.
- 23-114-705. Examination of records.
- 23-114-706. Complaints.

Effective Dates. Acts 2009, No. 499, § 13: Mar. 24, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law imposes a burdensome tax on licensed authorized bingo organizations, that the tax produces revenues that far exceed funds necessary to administer and enforce bingo and raffle laws in this state, and that the tax should be reduced as soon as possible to relieve the burden on licensed authorized organizations and advance the

charitable interests served by bingo games. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-114-701. Revocation of license — Licensed authorized organization.

The license issued to an authorized organization is subject to revocation under this chapter if the organization:

- (1) Makes a false statement or material omission in an application for a license under this chapter;
- (2) Fails to maintain records that fully and accurately record each transaction connected with:
 - (A) Conducting raffles or games of bingo; and
 - (B) Leasing of premises to be used for raffles or games of bingo;
- (3) Falsifies or makes a false entry in a book or record if the entry relates in any way to the promotion, operation, or administration of raffles or games of bingo;
- (4) Diverts or pays a portion of the proceeds from a raffle or a game of bingo to a person except in furtherance of one (1) or more of the lawful purposes set forth in this chapter; or
- (5) Violates this chapter or a term of a license issued under this chapter in any other way.

History. Acts 2007, No. 388, § 1.

23-114-702. Revocation of license — Distributors and manufacturers.

The license issued to a distributor or manufacturer is subject to revocation under this chapter if the licensee:

- (1) Makes a false statement or material omission in an application for a license under this chapter;
- (2) Fails to maintain records that fully and accurately record all transactions connected with the distribution of bingo equipment;
- (3) Falsifies or makes a false entry in a book or record if the entry relates in any way to the distribution of bingo equipment; or
- (4) Violates this chapter or a term of a license issued under this chapter in any other way.

History. Acts 2007, No. 388, § 1.

23-114-703. Inspection of premises.

The Department of Finance and Administration may enter and inspect the premises where:

- (1) A raffle or a game of bingo is being conducted or intended to be conducted; or
- (2) Equipment used or intended for use in a raffle or a game of bingo is located.

History. Acts 2007, No. 388, § 1.

23-114-704. Injunction.

(a) If the Department of Finance and Administration has reason to believe that this chapter has been violated, the Director of the Department of Finance and Administration may petition a court for injunctive relief to restrain the violation.

(b)(1) Venue for an action seeking injunctive relief against a licensed distributor or a licensed manufacturer is in Pulaski County, Arkansas.

(2) Venue for an action seeking injunctive relief against a licensed authorized organization is in the county where the licensed authorized organization resides.

(c) If the court finds that this chapter has been violated, the court shall restrain the violation by issuing:

- (1) A temporary restraining order;
- (2) After due notice and hearing, a temporary injunction; and
- (3) After a final trial, a permanent injunction.

History. Acts 2007, No. 388, § 1; 2009, No. 164, § 19; 2009, No. 499, § 11.

Amendments. The 2009 amendment by No. 164, in (c), subdivided the text, substituted “restrain the violation by issuing” for “issue” in the introductory paragraph, deleted “to restrain the violation”

at the end of (c)(3), and made related changes.

The 2009 amendment by No. 499 deleted “or is about to be” preceding “violated” in (a); and in (b), inserted (b)(2), redesignated the remaining text accordingly, and inserted “against a licensed

distributor or a licensed manufacturer” in
(b)(1).

23-114-705. Examination of records.

To verify compliance with this chapter, the Department of Finance and Administration may audit and examine the books, papers, records, equipment, and place of business of a:

- (1) Licensed authorized organization;
- (2) Distributor licensed under this chapter; or
- (3) Manufacturer licensed under this chapter.

History. Acts 2007, No. 388, § 1; 2009, No. 164, § 20. redesignated the section, and made related and stylistic changes.

Amendments. The 2009 amendment

23-114-706. Complaints.

If a person suspects a violation of this chapter, he or she may file a complaint concerning a licensed authorized organization with the Department of Finance and Administration.

History. Acts 2009, No. 499, § 12.

CHAPTER 115

ARKANSAS SCHOLARSHIP LOTTERY ACT

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS LOTTERY COMMISSION.
- 3. EMPLOYEES OF ARKANSAS LOTTERY COMMISSION.
- 4. OPERATION OF LOTTERY.
- 5. VENDORS.
- 6. RETAILERS.
- 7. PROCUREMENTS.
- 8. LOTTERY PROCEEDS.
- 9. PENALTIES.
- 10. DEBTORS OWING MONEY TO THE STATE.
- 11. ARKANSAS LOTTERY COMMISSION LEGISLATIVE OVERSIGHT COMMITTEE.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 23-115-101. Short title.
- 23-115-102. Legislative intent.

SECTION.

- 23-115-103. Definitions.
- 23-115-104. Fiscal impact statement.

Effective Dates. Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the

State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure

to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 20, § 5: Feb. 9, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Public Employees' Retirement System

currently requires that retirement contributions be based on a member's base salary plus any multipliers; that retirement contributions and benefits should be determined based on a member's base salary and not any multipliers or special salary allowances; and that this act is immediately necessary to clarify the meaning of the term 'compensation' for purposes of the Arkansas Public Employees' Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 207, § 31: Mar. 8, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the

Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2011, No. 1180, § 4: Apr. 4, 2011. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans who obtain post-secondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by

the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-115-101. Short title.

This chapter shall be known and may be cited as the “Arkansas Scholarship Lottery Act”.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-102. Legislative intent.

It is found and declared by the General Assembly that:

(1) Net proceeds of lotteries conducted under this chapter shall be used to:

(A) Fund and provide for scholarships and grants to citizens of the State of Arkansas enrolled in public and private nonprofit two-year and four-year colleges and universities located within the state; and

(B) Supplement, not supplant, nonlottery educational resources;

(2) Lotteries shall be operated and managed in a manner that:

(A) Provides continuing entertainment to the public;

(B) Maximizes revenues; and

(C) Ensures that the lotteries are operated with integrity, dignity, and adequate internal controls and free of political influence; and

(3) The Arkansas Lottery Commission shall be accountable to the General Assembly and to the public through a system of audits and reports.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-103. Definitions.

As used in this chapter:

(1) "Administrative expenses" means operating expenses, excluding amounts set aside for prizes, regardless of whether the prizes are claimed, and excluding amounts held as a fidelity fund under § 23-115-603;

(2) "Administrative order" means the final disposition of the Arkansas Lottery Commission in any matter other than a claim in contract or in tort, including without limitation licensing, in which the Arkansas Lottery Commission is required by law to make its determination after notice and a hearing;

(3)(A) "Casino gambling" means a location or business for the purposes of conducting illegal gambling activities, including without limitation activities under § 5-66-101 et seq. that are not authorized under this chapter.

(B) "Casino gambling" does not include the sale and purchase of tickets or shares;

(4)(A) "Compensation" means any money or anything of value received or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof.

(B) "Compensation" includes without limitation a payment made under obligation for services or other value received.

(C) Subdivisions (4)(A) and (B) of this section do not apply to "compensation" as used in § 23-115-304;

(5) "Female-owned business" means a business:

(A) Whose management and daily business operations are under the control of one (1) or more females; and

(B) Either:

(i) Individually owned by a female who reports as her personal income for Arkansas income tax purposes the income of the business;

(ii) Which is a partnership in which a majority of the ownership interest is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or

(iii) Which is a corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation;

(6) "Gift" means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor;

(7) "Immediate family" means the father, mother, sister, brother, husband, wife, child, grandmother, grandfather, grandchild, father-in-law, mother-in-law, sister-in-law, brother-in-law, daughter-in-law, son-

in-law, stepchild, grandmother-in-law, grandfather-in-law, stepgrandchild, or any individual acting as parent or guardian;

(8) "Incompetence" means:

(A) Gross ignorance of official duties;

(B) Gross carelessness in the discharge of official duties; or

(C) Inability or unfitness to discharge promptly and properly official duties because of a serious physical or mental defect that did not exist at the time of the person's appointment;

(9) "License" means authorization granted by the Arkansas Lottery Commission to an individual to operate as a retailer, including without limitation the execution of a contract between the Arkansas Lottery Commission and the individual relating to obligations and terms for operating as a retailer;

(10) "Lobbying" means communicating directly or soliciting others to communicate with any member of the Arkansas Lottery Commission, the Director of the Arkansas Lottery Commission, any employee of the Arkansas Lottery Commission, or a member of the Arkansas Lottery Commission Legislative Oversight Committee with the purpose of influencing the actions of the Arkansas Lottery Commission or the Arkansas Lottery Commission Legislative Oversight Committee;

(11) "Local government" means:

(A) A county;

(B) A city of the first class or a city of the second class;

(C) An incorporated town; or

(D) Any other district or political subdivision or any board, commission, or agency of the political subdivisions under subdivisions (11)(A)-(C) of this section;

(12)(A) "Lottery" means a game of chance approved by the Arkansas Lottery Commission and operated under this chapter.

(B) "Lottery" includes without limitation:

(i) An instant ticket;

(ii) A draw game;

(iii) Participation in a multistate or multisovereign game; and

(iv) A raffle.

(C) "Lottery" does not include:

(i) Casino gambling;

(ii) A video lottery;

(iii) Pari-mutuel wagering on horse racing or greyhound racing governed by the Arkansas Horse Racing Law, § 23-110-101 et seq., or the Arkansas Greyhound Racing Law, § 23-111-101 et seq., whether the pari-mutuel wagering is on live racing, simulcast racing, or races conducted in the past and rebroadcast by electronic means;

(iv) Wagering on electronic games of skill under the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, § 23-113-101 et seq.; or

(v) Conducting or participating in charitable bingo and raffles under the Charitable Bingo and Raffles Enabling Act, § 23-114-101 et seq.;

(13) "Lottery proceeds" means all revenue derived from the sale of tickets or shares and all other moneys derived from or in connection with the operation of a lottery, including without limitation fees, offsets, reimbursements, insurance proceeds, damages, and liquidated damages collected or imposed by the Arkansas Lottery Commission under this chapter;

(14)(A) "Major procurement contract" means a contract for a gaming product or service costing more than seventy-five thousand dollars (\$75,000), including without limitation:

- (i) A major advertising contract;
- (ii) An annuity contract;
- (iii) A prize payment agreement;
- (iv) A consulting service;
- (v) Lottery equipment;
- (vi) Tickets; and
- (vii) Any other product and service unique to lotteries.

(B) "Major procurement contract" does not include a material, supply, equipment, or service common to the ordinary operations of the Arkansas Lottery Commission.

(C) When the cost of a proposed contract for a gaming product or service is to be paid in whole or in part on a contingent basis, the Arkansas Lottery Commission shall estimate the value of the proposed contract to determine whether it is a major procurement contract;

(15) "Member of a minority" means a lawful permanent resident of this state who is:

- (A) African American;
- (B) Hispanic American;
- (C) American Indian;
- (D) Asian American; or
- (E) Pacific Islander American;

(16) "Minority-owned business" means a business that is owned by:

(A) An individual who is a member of a minority who reports as his or her personal income for Arkansas income tax purposes the income of the business;

(B) A partnership in which a majority of the ownership interest is owned by one (1) or more members of a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or

(C) A corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more members of a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation;

(17) "Net proceeds" means lottery proceeds less:

(A) Operating expenses;

(B) The amount of fidelity fund revenue under § 23-115-603 that exceeds five hundred thousand dollars (\$500,000);

(C) The undepreciated amount of capital assets; and

(D) Accruals that will not result in a cash outflow;

(18) "Nonlottery state educational resources" means the same as defined in § 6-85-204;

(19) "Operating expenses" means all costs of doing business, including without limitation:

(A) Prizes, commissions, and other compensation paid to retailers;

(B) Contracts for products or services necessary for the operation of the lottery, including without limitation the execution of major procurement contracts;

(C) Advertising and marketing costs;

(D) Personnel costs;

(E) Capital costs or depreciation of property and equipment;

(F) Funds for compulsive gambling education and treatment;

(G) The payment of sums to the Arkansas State Claims Commission for the reconciliation of valid claims against the Arkansas Lottery Commission;

(H) Payments for the cost of a state and federal criminal background check;

(I) Payments to the Department of Higher Education to:

(i) Reimburse the Department of Higher Education for the costs of administering scholarship awards funded with net proceeds; and

(ii) Replenish nonlottery state educational resources expended by the Department of Higher Education on scholarship awards otherwise funded with net proceeds;

(J) Amounts annually transferred to a fidelity fund under § 23-115-603;

(K) Amounts paid to governmental entities for goods or services provided to the Arkansas Lottery Commission, including without limitation services provided by the Division of Legislative Audit, the Department of Human Services, and the Department of Finance and Administration; and

(L) Withholding and payment of income taxes from lottery prizes;

(20) "Person" means any individual, corporation, partnership, unincorporated association, or other legal entity;

(21)(A) "Public official" means:

(i) The Governor;

(ii) The Lieutenant Governor;

(iii) The Secretary of State;

(iv) The Treasurer of State;

(v) The Attorney General;

(vi) The Commissioner of State Lands;

(vii) The Auditor of State; or

(viii) A member of the General Assembly.

(B) "Public official" includes an individual during the time between the date he or she is elected and the date he or she takes office;

(22) "Retailer" means a person who sells tickets or shares on behalf of the Arkansas Lottery Commission under a license;

(23) "Share" means any intangible evidence of participation in a lottery;

(24) "Ticket" means any tangible evidence issued by a lottery to provide participation in a lottery;

(25)(A) "Vendor" means a person who provides or proposes to provide goods or services to the Arkansas Lottery Commission under a major procurement contract.

(B) "Vendor" does not include:

(i) An employee of the Arkansas Lottery Commission;

(ii) A retailer; or

(iii) A state agency or instrumentality.

(C) "Vendor" includes a corporation whose stock is publicly traded and that is the parent company of the contracting party in a major procurement contract;

(26) "Video lottery" means a lottery game that allows a game to be played using an electronic computer and an interactive computer terminal device:

(A) That is equipped with a video screen and keys and a keyboard or other equipment allowing input by an individual player;

(B) Into which the player inserts coins, currency, vouchers, or tokens as consideration in order for play to be available; and

(C) Through which the player may receive free games, coins, tokens, or credits that may be redeemed for cash, annuitized payments over time, a noncash prize, or nothing, as may be determined wholly or predominantly by chance;

(27) "Fiscal impact statement" means a realistic written statement of the:

(A) Purpose of a proposed law or proposed amendment to a law under this chapter; and

(B) Estimated financial cost to the Arkansas Lottery Commission, the lottery, and this state of implementing or complying with the proposed law or proposed rule;

(28)(A) "Multistate or multisoovereign lottery" and "multistate or multisoovereign game" mean a lottery or game:

(i) Provided by an association or group of state-operated or sovereign-operated lotteries that is:

(a) Organized for the purpose of government benefit; and

(b) Wholly owned and operated by the member lotteries under a mutual agreement, contract, or compact; and

(ii) Operated pursuant to the terms of the association's or group's rules governing the operation and the payment of prizes of the game.

(B) "Multistate or multisovereign lottery" and "multistate or multisovereign game" do not include a lottery prohibited or excluded under this chapter;

(29) "Prize promotion" means an action taken to enhance the play for an individual game by one (1) or more of the following:

(A) Funding player affinity programs to promote play of a particular instant or online game;

(B) Enriching the prize for an instant or online game;
 (C) Instituting player incentives for an individual game;
 (D) Instituting retailer commission incentives for an individual game; or

(E) Funding supplemental advertising expenses related to enhancing the promotion of an individual game; and

(30)(A) “Unclaimed lottery prize money” means a lottery prize expense on the financial books of the commission that is released from the expense category when a lottery prize is not claimed within the required claim period for the game during a fiscal year.

(B) With respect to a multistate or multisoovereign game, “unclaimed lottery prize money”:

(i) Includes any unclaimed prize money returned to the commission from a multistate or multisovereign game; and

(ii) Does not include unclaimed prize money from a multistate or multisovereign game that under the agreement of the states participating in the multistate or multisovereign game is not returned to the participating states but is applied under the terms of the agreement.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 27; 2010, No. 265, §§ 20-23; 2010, No. 294, §§ 20-23; 2011, No. 20, § 1; 2011, No. 207, § 20; 2011, No. 1173, § 1; 2011, No. 1180, § 2.

Amendments. The 2009 amendment by No. 1405 deleted former (1); redesignated (2) through (4) as (1) through (3); inserted (4); substituted “Incompetence” for “Incompetency” in the introductory language of (8); substituted “(11)(A)–(C)” for “(10)(A)–(C)” in (11); substituted “Arkansas Lottery Commission” for “commission” in (13); inserted “contract for a” in the introductory language of (14)(A); rewrote (14)(C), (15), and (21); and inserted “the Department of Finance and Administration” in (19)(K).

The 2010 amendment by identical acts Nos. 265 and 294 inserted “daughter-in-law, son-in-law” in (7); added (12)(B)(iv); in (13), inserted “or in connection with the operation of,” “offsets, reimbursements, insurance proceeds, damages, and liquidated damages,” and “or imposed”; inserted “the Department of Human Services” in (19)(K); and added (19)(L).

The 2011 amendment by No. 20 added (4)(C).

The 2011 amendment by No. 207 redesignated former (17) as (17)(A); and added (17)(B) through (17)(D).

The 2011 amendment by No. 1173 added (27).

The 2011 amendment by No. 1180 added (28) through (30).

23-115-104. Fiscal impact statement.

(a) The author of a bill filed in the House of Representatives or the Senate shall have a fiscal impact statement prepared if the bill:

- (1) Amends this chapter; or
- (2) Will impose a new or increased cost to:
 - (A) The Arkansas Lottery Commission; or
 - (B) A lottery.

(b) The author of the bill shall file the fiscal impact statement with the chair of the committee to which the bill is referred:

(1) At least three (3) days before the bill may be called up for final action in the committee during a regular session of the General Assembly;

(2) At least three (3) days before the bill may be called up for final action in the committee during a fiscal session of the General Assembly; and

(3) At least one (1) day before the bill may be called up for final action in the committee during an extraordinary session of the General Assembly.

(c)(1) A fiscal impact statement under this section shall be developed by the Bureau of Legislative Research within the guidelines adopted by the Arkansas Lottery Commission Legislative Oversight Committee.

(2) The Department of Higher Education or the commission, as applicable, shall assist in the preparation of the fiscal impact statement.

(d)(1)(A) If a bill requiring a fiscal impact statement under this section is called up for final passage in the House of Representatives or the Senate and a fiscal impact statement has not been provided by the author of the bill or by the committee to which the bill was referred, any member of the House of Representatives or the Senate may object to the bill's being called up for final passage until a fiscal impact statement is prepared and made available on the desk of each member of the House of Representatives or the Senate at least one (1) day before the bill's being called up for final passage.

(B) An affirmative vote of two-thirds ($\frac{2}{3}$) of a quorum present and voting shall override the objection.

(2) If an objection is made without override, the presiding officer of the House of Representatives or the Senate shall cause the bill to be referred to the bureau for the preparation of a fiscal impact statement that shall be filed with the presiding officer of the House of Representatives or the Senate not later than five (5) days from the date of the request.

History. Acts 2011, No. 1173, § 2.

SUBCHAPTER 2 — ARKANSAS LOTTERY COMMISSION

SECTION.

- 23-115-201. Arkansas Lottery Commission — Creation — Venue.
- 23-115-202. Members — Duties.
- 23-115-203. Qualifications of commission members.
- 23-115-204. Lottery Retailer Advisory Board.
- 23-115-205. Commission powers.
- 23-115-206. Internal controls — Annual audit.

SECTION.

- 23-115-207. Rulemaking.
- 23-115-208. Sovereign immunity.
- 23-115-209. Appealing administrative orders of the commission.
- 23-115-210. Removal of commission member.
- 23-115-211. Certain sections inapplicable.
- 23-115-212. Duties and responsibilities of internal auditor.

Effective Dates. Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: "It is found and deter-

mined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly ap-

proved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an

emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 207, § 31: Mar. 8, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-201. Arkansas Lottery Commission — Creation — Venue.

(a) There is created the Arkansas Lottery Commission to establish and oversee the operation of one (1) or more lotteries under this chapter.

(b) The commission is a self-supporting and revenue-raising agency of the state.

(c) The commission shall reimburse other governmental entities that provide goods or services to the commission.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-202. Members — Duties.

(a)(1) The Arkansas Lottery Commission consists of the following members:

(A) Three (3) members appointed by the Governor;

(B) Three (3) members appointed by the Speaker of the House of Representatives; and

(C) Three (3) members appointed by the President Pro Tempore of the Senate.

(2) The members of the commission shall elect annually:

(A) A chair; and

(B) Other officers necessary to carry on its business.

(b)(1) Of the initial appointees to the commission by the Governor:

(A) One (1) member shall serve a term of two (2) years;

(B) One (1) member shall serve a term of four (4) years; and

(C) One (1) member shall serve a term of six (6) years.

(2) Of the initial appointees to the commission by the President Pro Tempore of the Senate:

(A) One (1) member shall serve a term of two (2) years;

(B) One (1) member shall serve a term of four (4) years; and

(C) One (1) member shall serve a term of six (6) years.

(3) Of the initial appointees to the commission by the Speaker of the House of Representatives:

(A) One (1) member shall serve a term of two (2) years;

(B) One (1) member shall serve a term of four (4) years; and

(C) One (1) member shall serve a term of six (6) years.

(4) All succeeding appointments to the commission shall be for terms of six (6) years.

(5) The appointing authorities shall determine the length of terms of the initial members of the commission.

(6) A member of the commission shall not serve more than two (2) terms.

(c) A vacancy on the commission shall be filled by the appointing authority for the unexpired portion of the term in which it occurs.

(d)(1) The commission shall meet at least quarterly upon the call of the chair.

(2) A majority of the total membership of the commission constitutes a quorum.

(e) The following shall not be appointed as a member of the commission:

(1) A member of the General Assembly; or

(2) A member of the immediate family of a member of the General Assembly.

(f) Members of the commission may receive expense reimbursement under § 25-16-901 et seq.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

A.C.R.C. Notes. Acts 2009, Nos. 605 and 606, § 25, provided:

“(a) Initial appointments to the Arkansas Lottery Commission under § 23-115-

202 shall be made within thirty (30) days of the effective date of this act.

“(b) The Arkansas Lottery Commission shall hold its first meeting within forty-five (45) days of the effective date of this act.”

23-115-203. Qualifications of commission members.

(a)(1) In making appointments to the Arkansas Lottery Commission, the appointing authorities under § 23-115-202 shall consider racial, gender, and geographical diversity among the membership as well as legal, financial, or marketing experience.

(2) Individuals appointed to the commission shall be residents of the State of Arkansas.

(b)(1) An individual considered for appointment to the commission shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check, to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The commission shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the appointing authority all releasable information obtained concerning the applicant.

(c) An individual shall not be appointed as a commission member if the individual has:

(1) Been convicted of a felony or a gambling offense in a state or federal court of the United States;

(2) Been convicted of a crime involving moral turpitude; or

(3) Entered into a plea agreement to avoid felony prosecution.

(d) Each member of the commission, before entering upon the discharge of the duties of a commissioner, shall file with the Secretary of State the constitutional oath of office.

(e) Upon the end of his or her term, a former member of the commission shall not:

(1) Represent a vendor or retailer before the commission for a period of two (2) years after the end of the former member's term; or

(2) Engage in lobbying on any matter related to the operation or conduct of lotteries under this chapter for a period of two (2) years after the end of the former member's term.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-204. Lottery Retailer Advisory Board.

(a)(1) The Chair of the Arkansas Lottery Commission, subject to the approval of a majority of a quorum of the Arkansas Lottery Commission, shall appoint a Lottery Retailer Advisory Board to be composed of ten (10) retailers.

(2) In making appointments to the board, the chair may consider a broad spectrum of geographical, racial, gender, and business characteristics of retailers.

(3) The board shall advise the commission on retail aspects of lotteries and present the concerns of retailers throughout the state.

(b)(1) Except as provided in subdivision (b)(2) of this section, each member appointed to the board shall serve a term of two (2) years.

(2)(A) Five (5) of the initial appointees shall serve initial terms of one (1) year.

(B) The initial appointees shall draw lots to determine which five (5) members shall serve a one-year term.

(3) A member of the board shall not serve more than six (6) terms.

(c)(1) The board shall provide by rule for its operating procedures.

(2) Members shall serve without compensation or reimbursement of expenses.

(3) The board may report to the commission and the Arkansas Lottery Commission Legislative Oversight Committee in writing at any time.

(4) The commission may invite the board to make an oral presentation to the commission at any meeting of the commission.

(d) The following shall not be appointed as a member of the board:

(1) A member of the immediate family of a member of the commission;

(2) A member of the immediate family of the director of the commission; or

(3) A member of the immediate family of an employee of the commission.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-205. Commission powers.

(a) The Arkansas Lottery Commission has all powers necessary or convenient to its usefulness in carrying out this chapter that are not in conflict with the Arkansas Constitution or the United States Constitution, including without limitation the following powers:

(1) To adopt and alter a seal;

(2) To adopt, amend, and repeal rules for the regulation of its affairs and the conduct of its business, to prescribe the duties of officers and

employees of the commission, and to perform other matters as the commission determines;

(3) To bring suits to enforce demands of the state under this chapter;

(4) To procure or to provide insurance;

(5) To hold copyrights, trademarks, and service marks and to enforce the commission's rights with respect to those copyrights, trademarks, and service marks;

(6) To initiate, supervise, and administer the operation of lotteries in accordance with this chapter and rules adopted under this chapter;

(7) To enter into written agreements with one (1) or more other states or sovereigns for the operation, participation in marketing, and promotion of multistate or multisovereign games;

(8) To conduct market research as necessary or appropriate;

(9) To acquire or lease real property and make improvements to the real property and acquire by lease or by purchase personal property, including without limitation:

(A) Computers;

(B) Mechanical, electronic, and online equipment and terminals;

(C) Intangible property, including without limitation computer programs, computer systems, and computer software; and

(D) Broadcast equipment;

(10) To administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence relative to any investigation or proceeding conducted by the commission;

(11) To employ:

(A) The Director of the Arkansas Lottery Commission; and

(B) An internal auditor to perform the duties and responsibilities required under § 23-115-212;

(12) To select and contract with vendors;

(13) To select and license retailers;

(14) To enter into contracts or agreements with state or local law enforcement agencies for the performance of law enforcement, background investigations, and security checks;

(15) To conduct background investigations and, if considered necessary by the commission, credit investigations on each potential vendor and retailer;

(16) To supervise ticket or share validation and lottery drawings;

(17) To inspect at times determined solely by the commission the facilities of a vendor or a retailer to determine:

(A) The integrity of the vendor's product or the operations of the retailer; and

(B) Whether the vendor or the retailer is in compliance with its contract or license;

(18) To report any suspected violation of this chapter to the appropriate prosecuting attorney or the Attorney General and to any law enforcement agencies having jurisdiction over the violation;

(19) Upon request, to provide assistance to the Chief Fiscal Officer of the State, the Legislative Auditor, the appropriate prosecuting attorney,

the Attorney General, or a law enforcement agency investigating a violation of this chapter;

(20) To enter into contracts of terms and conditions that the commission determines;

(21) To establish and maintain banking relationships associated with the maintenance and investment of lottery proceeds, including without limitation the establishment of checking and savings accounts and trust funds;

(22)(A) To advertise and promote lotteries and scholarships and grants funded by net proceeds.

(B) The commission shall seek the advice of the Department of Higher Education when advertising to promote scholarships and grants funded by net proceeds;

(23) To approve, disapprove, amend, or modify the budget recommended by the director for the operation of the commission;

(24) To act as a retailer and to establish and operate a sales facility to conduct promotions that involve the sale of tickets or shares and any related merchandise;

(25)(A) To contract with one (1) or more independent testing laboratories to scientifically test and technically evaluate lottery games, lottery terminals, and lottery operating systems.

(B) An independent testing laboratory shall:

(i) Have a national reputation that is demonstrably competent; and

(ii) Be qualified to scientifically test and evaluate all components of a lottery game, lottery terminal, or lottery operating system.

(C) An independent testing laboratory shall not be owned or controlled by a vendor or a retailer;

(26) To withhold state and federal income taxes as required by law; and

(27) To adopt and amend rules necessary to carry out and implement its powers and duties, organize and operate the commission, regulate the conduct of lotteries in general, and any other matters necessary or desirable for the efficient and effective operation of lotteries for the convenience of the public.

(b) The powers enumerated in subsection (a) of this section:

(1) Are in addition to those powers of the commission enumerated elsewhere in this chapter; and

(2) Do not limit or restrict any other powers of the commission.

(c) The commission may delegate to one (1) or more of its members, to the director, or to any agent or employee of the commission powers and duties as it deems proper.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 28; 2010, No. 265, § 24; 2010, No. 294, § 24; 2011, No. 207, § 21.

Amendments. The 2009 amendment by No. 1405 rewrote (a)(11)(B).

The 2010 amendment by identical acts Nos. 265 and 294 inserted present (26) and redesignated former (26) as (27).

The 2011 amendment rewrote (a)(11)(B).

23-115-206. Internal controls — Annual audit.

(a) To ensure the financial integrity of lotteries, the Arkansas Lottery Commission shall:

(1) Establish and maintain effective internal controls over financial reporting, including the monitoring of ongoing activities, and comply with the Arkansas Constitution and applicable laws, rules, contracts, agreements, and grants;

(2)(A) Establish and maintain effective internal controls to prevent and detect fraud, including without limitation a system of internal audits.

(B) The commission shall:

(i) By July 1, 2011, approve a formal, written three-year audit plan; and

(ii) Annually review the audit plan.

(C) The commission or a subcommittee of the commission shall review and take action to approve or reject a recommendation from the internal auditor to amend the audit plan;

(3) Include in any contract or license with a vendor or retailer for data processing services or other computer services a provision permitting the Division of Legislative Audit to have access and authority to audit the computer systems of the vendor or retailer;

(4) Notify the division of all known fraud or suspected fraud or all known or suspected illegal acts involving management or other employees of the commission or others with whom the commission contracts;

(5) Inform the division and the Chief Fiscal Officer of the State of any known material violations of the Arkansas Constitution, applicable statutes, rules, contracts, agreements, or grants;

(6) Prepare the financial statements, including the related notes to the financial statements, of the commission in accordance with generally accepted accounting principles and in accordance with guidelines and timelines established by the Chief Fiscal Officer of the State to permit incorporation into the state's financial statements and to permit the audit of the state's financial statements and the commission's financial statements in a timely manner;

(7) Make all financial records and related information available to the division, including the identification of significant vendor relationships in which the vendor has the responsibility for program compliance, in accordance with §§ 10-4-416 and 10-4-424;

(8)(A) Submit monthly reports to the Governor and the Arkansas Lottery Commission Legislative Oversight Committee disclosing the following budgeted and actual information for the reporting period and cumulatively for the fiscal year:

(i) Total lottery revenues;

(ii) Prize disbursements;

(iii) Operating expenses;

(iv) Net assets; and

(v) Administrative expenses.

(B) The commission shall submit a comprehensive annual financial report to the Governor and to the Arkansas Lottery Commission Legislative Oversight Committee by placing the report on the commission's website and providing notice of its availability to the Governor and to the Arkansas Lottery Commission Legislative Oversight Committee.

(C)(i) The comprehensive annual financial report shall comply with Governmental Accounting Standards Board Statement 34 and follow the guidelines of the Certificate of Achievement for Excellence in Financial Reporting Program of the Government Finance Officers Association.

(ii) The Arkansas Lottery Commission Legislative Oversight Committee shall identify the statistical data required for compliance with this subdivision (a)(8)(C).

(D) The comprehensive annual financial report shall include without limitation:

(i) Information concerning the commissioners of the Arkansas Lottery Commission;

(ii) A current organizational chart;

(iii) Information on each type of lottery game offered by the Arkansas Scholarship Lottery, game promotions, or other activities related to games during the fiscal year;

(iv) The annual financial audit report made to the Legislative Joint Auditing Committee;

(v) A statement of revenue, expenses, and changes in net assets for each fiscal year since inception of the Arkansas Scholarship Lottery;

(vi) Separate reports from each component or department of the commission or Arkansas Scholarship Lottery, including without limitation sales, marketing, retailers, gaming operations, players, and security;

(vii) A fiscal year-end report on any information required to be reported by the commission on a monthly basis, including without limitation:

(a) Unclaimed lottery prize money under § 23-115-403;

(b) The Scholarship Shortfall Reserve Trust Account under § 23-115-802; and

(c) Minority-owned businesses and female-owned business participation under § 23-115-401;

(viii) Information concerning the Arkansas Scholarship Lottery's industry standings or rankings;

(ix) Information concerning the scholarships awarded from net lottery proceeds, including without limitation:

(a) Demographic reports from the Department of Higher Education for each full semester during the fiscal year on accessibility to scholarships, award amounts for each approved institution of higher education; and

(b) The department's report to the Arkansas Lottery Commission Legislative Oversight Committee required under § 6-85-219(b);

- (x) A report from the Lottery Retailer Advisory Board, if a report was received during the fiscal year;
 - (xi) Where to find information on gambling disorder treatment and education programs;
 - (xii) Where to find website information on rules, gaming, and frequently asked questions; and
 - (xiii) Contact information for the Arkansas Scholarship Lottery and key employees of the commission;
- (9) Maintain weekly or more frequent records of lottery transactions, including without limitation:
- (A) The distribution of tickets or shares to retailers;
 - (B) Revenues received;
 - (C) Claims for lottery prizes;
 - (D) Lottery prizes paid;
 - (E) Lottery prizes forfeited; and
 - (F) Other financial transactions of the commission;
- (10)(A) Submit to the cochairs of the Arkansas Lottery Commission Legislative Oversight Committee by April 30 of each year the estimated annual operating budget for the commission for the next fiscal year.
- (B) At a minimum, the estimated annual operating budget submitted for the Arkansas Lottery Commission Legislative Oversight Committee's review shall:
- (i) Contain an estimate of the net proceeds to be available for scholarships and grants during the succeeding fiscal year;
 - (ii) Compare the:
 - (a) Actual revenues and expenditures for the last completed fiscal year;
 - (b) Budgeted revenues and expenditures for the current fiscal year; and
 - (c) Estimated revenues and expenditures for the next fiscal year;
 - (iii) Contain an explanation of increases or decreases in revenues and expenditures shown in the estimated annual operating budget for the next fiscal year compared to the budgeted revenues and expenditures for the current fiscal year;
 - (iv) Classify all revenues and expenditures by specific purpose instead of "miscellaneous" or "other";
 - (v) Contain a schedule of the total amounts of regular salaries, extra help compensation, overtime compensation, and personal services matching as defined in § 19-4-521; and
 - (vi) For each position title authorized under §§ 23-115-305 — 23-115-307, contain a schedule of the annual salary, special allowance, or grade and include:
 - (a) The total number of persons currently employed;
 - (b) The number of Caucasian male employees;
 - (c) The number of Caucasian female employees;
 - (d) The total number of Caucasian employees;
 - (e) The number of African-American male employees;

(f) The number of African-American female employees;

(g) The number of other employees who are members of racial minorities; and

(h) The total number of minorities currently employed; and

(11) Adopt the same fiscal year as that used by state government.

(b)(1)(A) The division shall annually audit the commission.

(B) The division may conduct an investigation or audit or prepare special reports regarding the commission or related entities, scholarships, grants, vendors, retailers, or any other transactions or relationships connected or associated with the commission or its operations, duties, or functions upon the approval of the Legislative Joint Auditing Committee.

(2) The commission shall reimburse the division at an hourly rate set by the Legislative Joint Auditing Committee for work performed by the division relating to any audit, investigation, or special report regarding the commission and related entities, scholarships, grants, vendors, retailers, or other related matters.

(3)(A) If the commission, the General Assembly, the Arkansas Lottery Commission Legislative Oversight Committee, or the Legislative Joint Auditing Committee requests additional audits or performance reviews of the fiscal affairs or operations of the commission to be conducted by a private certified public accountant or other consultant, the division shall select and contract with appropriate certified public accountants or consultants to provide the services.

(B) The division shall contract for the services which shall be paid directly to the contractor by the commission.

(C) A copy of any report or management correspondence prepared by the certified public accountants or consultants shall be forwarded to the commission, the division, and the Arkansas Lottery Commission Legislative Oversight Committee.

(4) This chapter does not limit the statutory authority of the division or the responsibilities of the commission or related entities, board members, employees, vendors, retailers, or any other individuals or entities to cooperate with the division or provide information or records requested by the division.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2011, No. 207, §§ 22, 23; 2011, No. 1057, §§ 1, 2.

A.C.R.C. Notes. Pursuant to § 1-2-207, subdivision (a)(10) is set out as amended by Acts 2011, No. 1057, § 2. Acts 2011, No. 207, § 23 amended subdivision (a)(10) to read as follows:

“(10)(A) Submit to the Cochairs of the Arkansas Lottery Commission Legislative Oversight Committee by April 30 of each year the estimated annual operating budget for the commission for the next fiscal year.

“(B) At a minimum, the estimated annual operating budget submitted for the Arkansas Lottery Commission Legislative Oversight Committee’s review shall:

“(i) Contain an estimate of the net proceeds to be available for scholarships and grants during the succeeding fiscal year;

“(ii) Compare the:

“(a) Actual revenues and expenditures for the last completed fiscal year;

“(b) Budgeted revenues and expenditures for the current fiscal year; and

“(c) Estimated revenues and expenditures for the next fiscal year;

"(iii) Contain an explanation of increases or decreases in revenues and expenditures shown in the estimated annual operating budget for the next fiscal year compared to the budgeted revenues and expenditures for the current fiscal year;

"(iv) Classify all revenues and expenditures by specific purpose, instead of 'miscellaneous' or 'other';

"(v) Contain a schedule of the total amounts of regular salaries, extra-help compensation, overtime compensation, and personal services matching as defined in § 19-4-521; and

"(vi) For each position title authorized under §§ 23-115-305 - 23-115-307, contain a schedule that includes the:

"(a) Annual salary, special allowance, or grade;

"(b) Total number of persons currently employed;

"(c) Estimated revenues and expenditures for the next fiscal year;

"(d) Number of Caucasian female employees;

"(e) Total number of Caucasian employees;

"(f) Number of black male employees;

"(g) Number of black female employees;

"(h) Number of other employees who are members of racial minorities; and

"(i) Total number of minorities currently employed; and"

Amendments. The 2011 amendment by No. 207 redesignated former (a)(2) as present (a)(2)(A); inserted (a)(2)(B) and (a)(2)(C); substituted "the estimated annual" for "a copy of the annual" in (a)(10)(A); and rewrote (a)(10)(B).

The 2011 amendment by No. 1057 substituted "the estimated annual operating budget" for "a copy of the annual operating budget" in (10)(A); and rewrote (10)(B).

23-115-207. Rulemaking.

(a) The Arkansas Lottery Commission may adopt rules regulating the conduct of lotteries in general, including without limitation rules specifying:

(1) The types of lotteries to be conducted;

(2)(A) The sale price of tickets or shares and the manner and method of sale.

(B)(i) All sales of tickets or shares are for cash only.

(ii) Payment by checks, credit cards, charge cards, or any form of deferred payment is prohibited;

(3) The number and amount of prizes;

(4) The method and location of selecting or validating winning tickets or shares;

(5) The manner and time of payment of prizes, including without limitation lump-sum payments or installments over a period of years;

(6)(A) The manner of payment of prizes to the holders of winning tickets or shares.

(B) Winners of five hundred dollars (\$500) or less may claim prizes from any of the following:

(i) A retailer; or

(ii) The commission.

(C)(i) Winners of more than five hundred dollars (\$500) shall claim prizes from the commission.

(ii) The commission may establish claim centers throughout the state as it deems necessary;

(7) The frequency of lotteries and drawings or selection of winning tickets or shares;

(8) The means of conducting drawings;

(9)(A) The method to be used in selling tickets or shares.

(B) The selling of tickets or shares may include the use of electronic or mechanical devices.

(C) If the commission elects to use electronic or mechanical devices to sell tickets or shares, the commission shall provide by rule:

(i) Specifications and required features for electronic or mechanical devices that may be used to sell tickets or shares; and

(ii) Procedures and requirements to prevent the use of electronic or mechanical devices by an individual under eighteen (18) years of age.

(D) A retailer who knowingly allows a person under eighteen (18) years of age to purchase a lottery ticket from an electronic or mechanical device is subject to the penalties under § 23-115-901.

(E) The commission shall publish a notice on the commission's public website that provides the location, including without limitation the street address, of each self-service lottery ticket vending machine in operation in this state;

(10) The manner and amount of compensation to retailers; and

(11) Any other matters necessary, desirable, or convenient toward ensuring the efficient and effective operation of lotteries, the continued entertainment and convenience of the public, and the integrity of the lotteries.

(b) The commission may adopt rules requiring the publication on a ticket or share of the odds of winning a particular lottery game.

(c)(1)(A) Except as provided in subdivision (c)(1)(B) of this section, the promulgation of rules under this chapter shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(B) The commission shall not be required to file rules under § 10-3-309.

(2)(A) The promulgation of rules by the commission shall be exempt from § 10-3-309.

(B) The commission shall file its rules with the Arkansas Lottery Commission Legislative Oversight Committee for review at least thirty (30) days before the expiration of the public comment period.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2011, No. 1192, § 1.

Amendments. The 2011 amendment inserted (a)(9)(E).

23-115-208. Sovereign immunity.

(a) This chapter does not waive the sovereign immunity of the State of Arkansas.

(b)(1) A claim in contract or in tort against the Arkansas Lottery Commission or its employees shall be presented to the Arkansas Lottery Commission.

(2) The Arkansas Lottery Commission shall promulgate rules concerning the consideration of claims in contract or in tort presented to the Arkansas Lottery Commission, including without limitation rules concerning the conduct of hearings on claims in contract or in tort.

(c)(1) A claimant may appeal the decision of the Arkansas Lottery Commission under subsection (b) of this section to the Arkansas State Claims Commission.

(2) The claimant may:

(A) Within forty (40) days after the decision is rendered, file with the Arkansas State Claims Commission a notice of appeal of the decision of the Arkansas Lottery Commission;

(B) Within forty (40) days after the decision is rendered, file with the Arkansas Lottery Commission a motion for reconsideration requesting the Arkansas Lottery Commission to reconsider its decision; and

(C) Within twenty (20) days after the Arkansas Lottery Commission's reconsideration or denial of the motion for reconsideration, file with the Arkansas State Claims Commission a notice of appeal of the decision of the Arkansas Lottery Commission.

(3) When the Arkansas Lottery Commission notifies parties of a decision of the Arkansas Lottery Commission, it shall advise the parties of the right of appeal.

(d)(1)(A) Except as provided in subdivisions (d)(2)-(4) of this section, appeals of claims in contract or in tort against the Arkansas Lottery Commission or its employees shall be conducted by the Arkansas State Claims Commission in the same manner as a claim under § 19-10-201 et seq.

(B) The Arkansas State Claims Commission shall consider an appeal de novo.

(2) A decision of the Arkansas State Claims Commission relating to a claim in contract or in tort against the Arkansas Lottery Commission or its employees shall not be appealed to the General Assembly.

(3)(A) A valid claim in any amount against the Arkansas Lottery Commission shall not be referred to the General Assembly for an appropriation.

(B) The Clerk of the Arkansas State Claims Commission shall notify the Arkansas Lottery Commission of the amount of the valid claim.

(C) Upon receipt of notification from the clerk, the Arkansas Lottery Commission shall deliver a check to the clerk, who shall deposit the sum as a nonrevenue receipt into the Miscellaneous Revolving Fund from which he or she shall disburse the amount of the claim to the claimant.

(4) Written reports under § 19-10-212 shall be filed with the Arkansas Lottery Commission Legislative Oversight Committee.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

RESEARCH REFERENCES

ALR. State Lotteries: Actions by Tick- State or Contractor for State. 48 A.L.R.6th
etholders or Other Claimants against 243.

23-115-209. Appealing administrative orders of the commission.

(a) A retailer, a vendor, or an applicant for a contract or a retailer license aggrieved by an administrative order of the Arkansas Lottery Commission may appeal that decision to Pulaski County Circuit Court.

(b) The court shall hear appeals from administrative orders of the commission, and based upon the record of the proceedings before the commission, may reverse the administrative order of the commission only if the person appealing the administrative order proves the administrative order to be:

- (1) Clearly erroneous;
- (2) Arbitrary and capricious;
- (3) Procured by fraud;
- (4) A result of substantial misconduct by the commission; or
- (5) Contrary to the United States Constitution, the Arkansas Constitution, or this chapter.

(c) The circuit court may remand an appeal to the commission to conduct further hearings.

(d)(1) A person who appeals the award of a contract, including without limitation a major procurement contract, is liable for all costs of appeal and defense if the appeal is denied or the contract award upheld.

(2) If upon the motion of the commission the court finds the appeal to have been frivolous, the cost of appeal and defense shall include without limitation the following expenses of the commission resulting from institution of the appeal:

- (A) Court costs;
- (B) Bond;
- (C) Legal fees; and
- (D) Loss of income.

(3) A person appealing the award of a contract may be entitled to the reasonable costs incurred in connection with the contract solicitation, including without limitation bid preparation costs.

History. Acts 2009, No. 605, § 1; 2009, by No. 1405 deleted “major procurement”
No. 606, § 1; 2009, No. 1405, §§ 29, 30. preceding “contract” in (a); and added

Amendments. The 2009 amendment (d)(3).

23-115-210. Removal of commission member.

(a)(1) A member of the Arkansas Lottery Commission may be removed by the appointing authority for:

- (A) Misconduct;
- (B) Incompetence; or
- (C) Any malfeasance in office.

(2) The appointing authority shall appoint a qualified individual to replace the removed member of the commission to serve the remainder of his or her term.

(b) An order of removal of a commission member by the appointing authority shall:

(1) Be in writing;

(2) Be delivered to the removed commission member or counsel for the removed commission member; and

(3) Specifically set out the grounds relied upon for removal.

(c)(1) A removed commission member may institute proceedings for review by filing a petition in Pulaski County Circuit Court within thirty (30) days after delivery to him or her or his or her attorney of the appointing authority's order of removal.

(2) This petition shall not supersede or stay the order of removal, nor shall any court enter an order to this effect or one that would impair the authority of the appointing authority to appoint a commission member whose service begins immediately upon fulfillment of the normal requirements for assuming office.

(d)(1) When the matter is heard by the circuit court, it shall be tried de novo without a jury.

(2) The appointing authority shall have the burden of proof to show by clear and convincing evidence that cause under subdivision (a)(1) of this section existed for removal of the commission member.

(3)(A) If the circuit court determines that cause has been shown, it shall enter an order removing the commission member in question from office.

(B) If the circuit court determines that cause under subdivision (a)(1) of this section has not been shown by clear and convincing evidence, the circuit court shall order the removed commission member reinstated to his or her position and upon request shall award a reasonable attorney's fee and court costs to the reinstated party.

(e)(1) Subject to the restrictions of subsection (c) of this section on supersedeas or stay orders, a removed commission member may appeal the decision of the circuit court to the Supreme Court.

(2) The appointing authority may appeal the decision of the circuit court to the Supreme Court, but the appeal shall not preclude the circuit court, in its discretion, from entering an order reinstating the removed member.

(f) A commission action in which the appointed replacement commission member participates is not void, voidable, or in any way subject to invalidation on grounds of participation of the appointed replacement commission member or lack of participation by the removed commission member if the circuit court or the Supreme Court orders the removed commission member reinstated.

23-115-211. Certain sections inapplicable.

In addition to any provision of law expressly exempting the Arkansas Lottery Commission, the following sections shall not apply to the commission:

- (1) Section 19-1-211;
- (2) Section 19-1-301 et seq.;
- (3) Section 19-1-609;
- (4) Section 19-4-1802;
- (5) Section 19-5-206;
- (6) Section 19-11-301 et seq.;
- (7) Section 22-9-103;
- (8) Section 22-9-104;
- (9) Section 25-1-104; and
- (10) Section 25-27-104.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 31; 2010, No. 265, § 25; 2010, No. 294, § 25.

Amendments. The 2009 amendment by No. 1405 inserted “to” in the introductory language; added (7) through (11); and made related changes.

The 2010 amendment by identical acts Nos. 265 and 294, in the introductory

language, added “In addition to any provision of law expressly exempting the Arkansas Lottery Commission” and substituted “commission” for “Arkansas Lottery Commission”; and deleted former (10) and redesignated former (11) as present (10).

23-115-212. Duties and responsibilities of internal auditor.

(a) The internal auditor employed by the Arkansas Lottery Commission shall report directly to the commission.

(b) The commission shall determine the duties and responsibilities of the internal auditor that:

(1) Assist the commission in the commission’s obligations under § 23-115-206; and

(2) Are consistent with the suggested standards for the professional practice of internal auditing as adopted by the Institute of Internal Auditors, including without limitation:

(A) Preparing a formal written three-year audit plan and presenting it to the commission for commission approval;

(B) Conducting ongoing reviews of the internal procedures, records, and operating procedures of the commission and the lotteries to:

(i) Verify compliance with established policies, procedures, and control systems;

(ii) Assure compliance with regulatory and statutory conditions; and

(iii) Assure adherence to generally accepted accounting principles; and

(C) Advising the commission of inconsistencies within or improvements needed to the internal controls, operating procedures, or accounting procedures of the commission or the lotteries.

(c)(1) The internal auditor shall report to the Arkansas Lottery Commission Legislative Oversight Committee one (1) time per month to:

- (A) Advise the committee concerning current issues and problems reported to the commission under subsection (b) of this section; and
- (B) Update the committee concerning the resolution of findings of the Division of Legislative Audit in the annual financial report for the commission.

(2) The internal auditor is not required to file a report, but shall include a statement in the monthly report of the commission if:

- (A) There are no current issues or problems reported to the commission; and
- (B) The commission and the division agree that all audit findings are resolved.

History. Acts 2011, No. 207, § 24.

SUBCHAPTER 3 — EMPLOYEES OF ARKANSAS LOTTERY COMMISSION

SECTION.

- 23-115-301. Director — Appointment — Duties.
- 23-115-302. Duties of director.
- 23-115-303. Employees — Background investigation.
- 23-115-304. Commission employees — Participation in Arkansas Public Employees' Retirement System.

SECTION.

- 23-115-305. Regular salaries.
- 23-115-306. Special salary allowances.
- 23-115-307. Expansion pool.
- 23-115-308. Participation in Arkansas Administrative Statewide Information System.

Effective Dates. Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preserva-

tion of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of

2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2011, No. 20, § 5: Feb. 9, 2011. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Public Employees’ Retirement System currently requires that retirement contributions be based on a member’s base salary plus any multipliers; that retirement contributions and benefits should be determined based on a member’s base salary and not any multipliers or special salary allowances; and that this act is immediately necessary to clarify the meaning of the term ‘compensation’ for purposes of the Arkansas Public Employees’ Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2011, No. 207, § 31: Mar. 8, 2011. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for

scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 1173, § 18: Apr. 12, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2013, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-115-301. Director — Appointment — Duties.

(a)(1)(A) The Arkansas Lottery Commission shall appoint the Director of the Arkansas Lottery Commission.

(B) The director is an employee of the commission and shall direct the day-to-day operations and management of the commission.

(2) The director is vested with powers and duties as specified by the commission and by law.

(3) The director serves at the pleasure of the commission.

(b)(1) An individual considered for appointment as director shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The commission shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant.

(c) The commission shall not employ as director an individual who has:

(1) Been convicted of a felony or a gambling offense in a state or federal court of the United States;

(2) Been convicted of a crime involving moral turpitude; or

(3) Entered into a plea agreement to avoid felony prosecution.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-302. Duties of director.

(a) The Director of the Arkansas Lottery Commission shall direct and supervise all administrative and technical activities related to the operation of a lottery in accordance with this chapter and with rules adopted by the Arkansas Lottery Commission.

(b) The director shall:

(1) Facilitate the initiation and supervise and administer the operation of the lotteries;

(2) Direct personnel as deemed necessary;

(3) Employ and compensate persons and firms as deemed necessary;

(4) Appoint, select, and employ officers, agents, and employees, including professional and administrative staff and personnel and hearing officers, and fix their compensation and pay their expenses as authorized by Arkansas law;

(5) Promote or provide for the promotion of lotteries and any functions related to the operation of a lottery;

(6) Prepare a budget for the approval of the commission;

(7) Require bond from retailers and vendors in amounts as required by the commission;

(8) Report monthly to the commission and the Arkansas Lottery Commission Legislative Oversight Committee a complete statement of lottery revenues and expenses for the preceding month and an accompanying statement of net assets;

(9) Annually by November 15, report to the Arkansas Lottery Commission Legislative Oversight Committee the following:

(A) For the immediately preceding fiscal year:

(i) The total amount of net proceeds from the state lottery; and

(ii) The amounts deposited into and disbursed from the Scholarship Shortfall Reserve Trust Account under § 23-115-802; and

(B) The commission's projection for net proceeds from the state lottery for the current fiscal year; and

(10) Perform other duties generally associated with a director of a commission of an entrepreneurial nature.

(c) The director may for good cause suspend, revoke, or refuse to renew any contract or license entered into in accordance with this chapter and the rules of the commission.

(d) The director or his or her designee may conduct hearings and administer oaths to persons to assure the security and integrity of lottery operations or to determine the qualifications of or compliance by vendors and retailers.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2010, No. 265, § 26; 2010, No. 294, § 26; 2011, No. 207, § 25.

Amendments. The 2010 amendment by identical acts Nos. 265 and 294 inserted present (b)(9) and redesignated former (b)(9) as (b)(10).

The 2011 amendment substituted "Annually by November 15" for "By August 15, 2011, and annually thereafter" in the introductory language of (b)(9).

23-115-303. Employees — Background investigation.

(a) As required by Arkansas Constitution, Article 16, § 4, the General Assembly shall fix the salaries of all employees of the Arkansas Lottery Commission, including without limitation the Director of the Arkansas Lottery Commission.

(b) A commission employee shall not have a financial interest in a vendor doing business or proposing to do business with the commission.

(c) A commission employee with decision-making authority shall not participate in a decision involving a retailer with whom the commission employee has a financial interest.

(d)(1) A commission employee who leaves the employment of the commission shall not:

(A) Represent a vendor or retailer before the commission for a period of two (2) years after leaving the employment of the commission; or

(B) Engage in lobbying on any matter related to the operation or conduct of a lottery for a period of two (2) years after leaving the employment of the commission.

(2)(A) Subdivision (d)(1) of this section is supplemental to § 19-11-701 et seq.

(B) If any provision of § 19-11-701 et seq. would impose a restriction on a specific employee greater than the restrictions under subdivision (d)(1) of this section, the provision of § 19-11-701 et seq. shall apply.

(e)(1) Each person considered for employment by the commission shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The commission shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant.

(f) The commission shall not employ an individual who has:

(1) Been convicted of a felony or a gambling offense in a state or federal court of the United States;

(2) Been convicted of a crime involving moral turpitude; or

(3) Entered into a plea agreement to avoid felony prosecution.

(g)(1) The commission shall bond a commission employee with access to commission funds or lottery revenue in an amount as provided by the commission and may bond other commission employees as deemed necessary.

(2) Bonds under subdivision (g)(1) of this section shall be fidelity bonds in excess of the amount provided by the Governmental Bonding Board.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-304. Commission employees — Participation in Arkansas Public Employees' Retirement System.

(a) Employees of the Arkansas Lottery Commission shall be members of the Arkansas Public Employees' Retirement System.

(b)(1) A commission employee's compensation for retirement purposes includes only the base salary of the employee under § 23-115-305.

(2) A commission employee's compensation for retirement purposes does not include a multiplier or other special salary allowance used to increase the employee's salary as authorized by the General Assembly, including without limitation the special salary allowances authorized under § 23-115-306.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2011, No. 20, § 2; 2011, No. 207, § 26; 2013, No. 1173, § 15.

A.C.R.C. Notes. Some of the language sought to be added to this section by Acts 2011, No. 20, § 2 could not be reconciled with language added to the section by Acts 2011, No. 207, § 26. In those instances, the amendment by Acts 2011, No. 207 prevailed because it was the last enactment pursuant to § 1-2-207. As amended by Acts 2011, No. 20, § 2, subsection (b) read as follows: "(b)(1) A commission employee's compensation for retirement purposes includes only the base salary of the employee under § 23-115-305. (2) A commission employee's compensation for retirement purposes does not include a multiplier or other special salary allowance used to increase the employee's salary as authorized by the General Assembly, in-

cluding without limitation the special salary allowances authorized under § 23-115-306."

Amendments. The 2011 amendment by No. 20 rewrote (b)(1); and added (b)(2).

The 2011 amendment by No. 207, in (b), substituted "under §§ 23-115-305 and 23-115-307" for "as authorized by the General Assembly," "a special salary allowance under § 23-115-306" for "any multipliers," and "the employee's salary" for "a person's salary as authorized by the General Assembly."

The 2013 amendment substituted "includes only the base salary of the employee under § 23-115-305" for "shall be the amount determined by the commission under §§ 23-115-305 and 23-115-307 and shall not include a special salary allowance under § 23-115-306 used to increase the employee's salary" in (b)(1).

23-115-305. Regular salaries.

There is established for the Arkansas Lottery Commission the following regular employees, the grades to be assigned to the respective positions, and the maximum annual salaries for each such position. The maximum annual salary for the positions assigned to grades shall be determined in accordance with, but shall not exceed, the maximum annual amount for the grade assigned in this section, as established in § 21-5-209. Except for the purpose of determining the maximum annual salary rate, which is to be applicable to each of the positions to which a salary grade is assigned in this section, in accordance with § 21-5-209, all positions set forth in this section shall be exempt from other provisions of the Uniform Classification and Compensation Act, § 21-5-201 et seq., but shall not be exempt from the Regular Salaries Procedures and Restrictions Act, § 21-5-101 et seq.

Item Class No. Code	Title	Maximum No. of Employees	Maximum Annual Salary Rate
(01)	LOTTERY CMSN DIRECTOR	1	\$141,603
(02)	LOTTERY CMSN INTERNAL AUDITOR	1	\$141,603
(03)	LOTTERY CMSN CHIEF OPERATING OFFICER	1	\$126,050
(04)	LOTTERY CMSN INFORMATION TECH DIR	1	GRADE N912
(05)	LOTTERY CMSN ADMIN & OPERATIONS DIR	1	GRADE N912
(06)	LOTTERY CMSN CHIEF LEGAL COUNSEL	1	GRADE N910
(07)	LOTTERY CMSN CHIEF FISCAL OFFICER	1	GRADE N910
(08)	LOTTERY CMSM MARKETING & PROD DEV DIR	1	GRADE N909
(09)	LOTTERY CMSN SALES/RETAIL RELATIONS DIR	1	GRADE N909
(10)	LOTTERY CMSN PROCUREMENT DIRECTOR	1	GRADE N908
(11)	LOTTERY CMSN ADMIN ANALYST	2	GRADE C115
(12)	LOTTERY CMSN ADMIN SUPPORT SUPERVISOR	2	GRADE C113
(13)	LOTTERY CMSN ADMIN SUPPORT SPEC III	6	GRADE C112

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 32.

Amendments. The 2009 amendment by No. 1405 deleted “or its successor”

following “et seq.” twice in the second sentence; deleted “EXECUTIVE” in the first row of the table; and made minor stylistic changes throughout.

23-115-306. Special salary allowances.

(a) The Arkansas Lottery Commission, upon approval of the Arkansas Lottery Commission Legislative Oversight Committee, may make special salary allowances authorized by this section for recruitment or retention in amounts as the commission may determine equitable in view of the exacting duties that are involved as a part of the salary of the:

- (1) Director of the Arkansas Lottery Commission;
- (2) Internal auditor of the commission; and

(3) Chief operating officer of the commission.

(b) For a position subject to a special allowance under subsection (a) of this section, the sum of the salary authorized by the General Assembly and the special salary allowance, shall not exceed an amount equal to two and one-half (2½) times the salary for the position authorized by the General Assembly.

(c)(1) The requirement of approval by the Arkansas Lottery Commission Legislative Oversight Committee before granting a special salary allowance under this section is not a severable part of this section.

(2) If the requirement of approval by the Arkansas Lottery Commission Legislative Oversight Committee is ruled unconstitutional by a court of competent jurisdiction, this section is void.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 33; 2010, No. 265, § 27; 2010, No. 294, § 27.

Amendments. The 2009 amendment by No. 1405 inserted “for recruitment or retention” in the introductory language of (a); deleted “Executive” at the beginning of (a)(1); rewrote (b); added (c); and made a stylistic change.

Amendments. The 2010 amendment by identical acts Nos. 265 and 294, in (b), deleted “The total compensation” from the beginning, substituted “a special” for “an” preceding “allowance,” substituted “the sum of” for “including,” and inserted “the” preceding “special salary.”

23-115-307. Expansion pool.

(a) The Arkansas Lottery Commission is authorized an expansion pool of sixty (60) positions not to exceed the career service grade C130 and fifteen (15) positions not to exceed the professional and executive grade N922 to be used to establish additional positions of the proper title and salary if the commission does not have sufficient positions available to address growth needs.

(b) A position established under this section shall not exceed a salary rate in excess of the highest rate established by grade or by line item in this subchapter.

(c) A position shall not be authorized from the expansion pool until the specific positions that are requested by the commission are reviewed by the Arkansas Lottery Commission Legislative Oversight Committee.

(d) When seeking review of positions by the Arkansas Lottery Commission Legislative Oversight Committee under this section, the commission shall provide an organizational chart indicating the current structure of the commission and its employees.

(e)(1) The requirement of review by the Arkansas Lottery Commission Legislative Oversight Committee before authorizing positions from the expansion pool is not a severable part of this section.

(2) If the requirement of review by the Arkansas Lottery Commission Legislative Oversight Committee is ruled unconstitutional by a court of competent jurisdiction, this section is void.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 34.

Amendments. The 2009 amendment by No. 1405 substituted “subchapter” or “act” in (b); and substituted “Arkansas Lottery Commission Legislative Oversight Committee” for “committee prior to” in (e)(1) and for “committee” in (e)(2).

23-115-308. Participation in Arkansas Administrative Statewide Information System.

The Arkansas Lottery Commission may participate in the Arkansas Administrative Statewide Information System.

History. Acts 2009, No. 1405, § 55.

SUBCHAPTER 4 — OPERATION OF LOTTERY

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| SECTION. | SECTION. |
| 23-115-401. Minority-owned and female-owned businesses. | 23-115-406. Authority of local government. |
| 23-115-402. Restriction on sales. | 23-115-407. Video lotteries prohibited. |
| 23-115-403. Attachments, garnishments, or executions withheld from lottery prizes — Validity of tickets or shares — Lottery prize restrictions — Unclaimed lottery prizes. | 23-115-408. Video lotteries by institution or facility governed by other wagering laws prohibited. |
| 23-115-404. Confidential information. | 23-115-409. Laws under other wagering chapters not affected. |
| 23-115-405. Intelligence sharing, reciprocal use, or restricted use agreements. | 23-115-410. Compulsive gambling disorder treatment and educational programs. |

Effective Dates. Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of

its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a re-

duction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 207, § 31: Mar. 8, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining post-secondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall

become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 1180, § 4: Apr. 4, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans who obtain post-secondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-401. Minority-owned and female-owned businesses.

(a) It is the intent of the General Assembly that the Arkansas Lottery Commission encourage participation by minority-owned businesses and female-owned businesses.

(b) The commission shall adopt a plan that encourages to the greatest extent possible a level of participation by minority-owned businesses and female-owned businesses taking into account the total number of all retailers and vendors, including any subcontractors.

(c) The commission shall provide training programs and other educational activities to encourage minority-owned businesses and female-owned businesses to compete for contracts on an equal basis.

(d) The commission shall employ staff to assist prospective vendors and retailers with entering into and competing for contracts, including without limitation the development and implementation of the plans and programs under subsections (b) and (c) of this section.

(e) The commission shall monitor the results of minority-owned business and female-owned business participation and shall report the results of minority-owned business and female-owned business participation to the Governor and the Arkansas Lottery Commission Legislative Oversight Committee on at least an annual basis.

History. Acts 2009, No. 605, § 1; 2009, by No. 1405 substituted “staff” for “procurement officials” in (d).
No. 606, § 1; 2009, No. 1405, § 35.

Amendments. The 2009 amendment

23-115-402. Restriction on sales.

(a)(1) Unless authorized to do so in writing by the Director of the Arkansas Lottery Commission, a person shall not sell a ticket or share at a price other than established by the Arkansas Lottery Commission.

(2)(A) Only a retailer holding a valid certificate of authority from the commission shall sell a ticket.

(B) This subsection does not prevent an individual who may lawfully purchase tickets or shares from making a gift of tickets or shares to another individual.

(b) This chapter does not prohibit the commission from designating certain of its agents and employees to sell or give tickets or shares directly to the public.

(c) Subject to prior approval by the commission, retailers may give away tickets or shares as a means of promoting goods or services to customers or prospective customers.

(d) A retailer shall not sell a ticket or share except from the locations evidenced by the retailer’s license issued by the commission unless the commission authorizes in writing any temporary location not listed in the retailer’s license.

(e)(1) Tickets or shares shall not be sold or given to individuals under eighteen (18) years of age.

(2) An individual under eighteen (18) years of age is not eligible to win a lottery prize.

(f) An individual is not eligible to win a lottery prize while the individual is incarcerated in:

- (1) The Department of Correction;
- (2) The Department of Community Correction; or
- (3) A county or municipal jail or detention facility.

History. Acts 2009, No. 605, § 1; 2009,
No. 606, § 1.

23-115-403. Attachments, garnishments, or executions withheld from lottery prizes — Validity of tickets or shares — Lottery prize restrictions — Unclaimed lottery prizes.

(a) Proceeds of a lottery prize are subject to Arkansas state income tax.

(b)(1) Except as otherwise provided in this chapter, attachments, garnishments, or executions authorized and issued under Arkansas law shall be withheld if timely served upon the Arkansas Lottery Commission.

(2) Subdivision (b)(1) of this section does not apply to a retailer.

(c) The commission shall adopt rules to establish a system of verifying the validity of tickets or shares claimed to win lottery prizes and to effect payment of lottery prizes, except that:

(1)(A) A lottery prize, any portion of a lottery prize, or any right of any individual to a lottery prize is not assignable.

(B) A lottery prize or any portion of a lottery prize remaining unpaid at the death of a lottery prize winner shall be paid to the estate of the deceased lottery prize winner or to the trustee of a trust established by the deceased lottery prize winner as settlor if:

(i) A copy of the trust document or instrument has been filed with the commission along with a notarized letter of direction from the settlor; and

(ii) No written notice of revocation has been received by the commission before the settlor's death.

(C) Following a settlor's death and before any payment to a successor trustee, the commission shall obtain from the trustee a written agreement to indemnify and hold the commission harmless with respect to any claims that may be asserted against the commission arising from payment to or through the trust.

(D) Under an appropriate judicial order, an individual shall be paid the lottery prize to which a winner is entitled;

(2) A lottery prize shall not be paid arising from claimed tickets that are:

(A) Stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received, or not recorded by the commission within applicable deadlines;

(B) Lacking in captions that conform and agree with the play symbols as appropriate to the particular lottery involved; or

(C) Not in compliance with rules and public or confidential validation and security tests of the commission appropriate to the particular lottery involved;

(3)(A) A particular lottery prize in any lottery shall not be paid more than one (1) time.

(B) If there is a determination that more than one (1) claimant is entitled to a particular lottery prize, the sole remedy of the claimants is the award to each of them of an equal share in the lottery prize;

(4)(A) Within one hundred eighty (180) days after the drawing in which a cash lottery prize has been won, a holder of a winning cash ticket or share from an Arkansas lottery or from a multistate or multisovereign lottery shall claim the cash lottery prize.

(B)(i) In an Arkansas lottery in which a player may determine instantly if he or she has won or lost, a player who has won shall claim a cash lottery prize within ninety (90) days after the playing of the instant game.

(ii) In any multistate or multisovereign lottery in which a player may determine instantly if he or she has won or lost, a player who has won shall claim a cash lottery prize within one hundred eighty (180) days after the playing of the instant game.

(C) If a valid claim is not made for a cash lottery prize within the applicable period, the cash lottery prize constitutes an unclaimed lottery prize for purposes of this section.

(D) The commission at any time may alter the time periods under subdivisions (c)(4)(A) and (B) of this section by rule; and

(5)(A) If practicable, an auditor chosen by the commission shall be present at a draw to determine the winners of a draw game to verify the accuracy of the results.

(B) The commission may request an auditor employed by the Division of Legislative Audit for the purposes of subdivision (c)(5) of this section.

(d)(1) A lottery prize shall not be paid upon a ticket or share purchased or sold in violation of this chapter.

(2) A lottery prize described in subdivision (d)(1) of this section is an unclaimed lottery prize for purposes of this section.

(e) The commission is discharged of all liability upon payment of a lottery prize.

(f)(1) The commission shall not pay a lottery prize that exceeds the amount of five hundred dollars (\$500) to any:

(A) Member of the commission;

(B) Employee of the commission; or

(C) Member of the immediate family of a member of the commission or an employee of the commission living in the same household as the member of the commission or the employee.

(2) If an officer, employee, agent, or subcontractor of a vendor has access to confidential information that may compromise the integrity of a lottery, a ticket or share shall not be purchased by and a lottery prize shall not be paid to the:

(A) Officer, employee, agent, or subcontractor of the vendor; or

(B) Immediate family of the officer, employee, agent, or subcontractor of the vendor.

(g)(1) During a fiscal year, the commission may expend up to two million five hundred thousand dollars (\$2,500,000) of unclaimed lottery prize money for one (1) or more of the following:

(A) Increasing the pool from which future lottery prizes are to be awarded;

(B) Maintaining online game reserves at a fiscally sound level; or

(C) Prize promotion.

(2) On the last day of each fiscal year, the commission shall deposit into the trust account for net lottery proceeds the amount of unclaimed lottery prize money existing at the end of the fiscal year less one million dollars (\$1,000,000).

(3) The commission shall include in its monthly reports to the Arkansas Lottery Commission Legislative Oversight Committee the following monthly and year-to-date amounts:

(A) Unclaimed lottery prize money;

(B) Expenditures from unclaimed lottery prize money; and

(C) Deposits to net lottery proceeds from unclaimed lottery prize money.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 36; 2010, No. 265, § 28; 2010, No. 294, § 28; 2011, No. 207, § 27; 2011, No. 1180, § 3.

Amendments. The 2009 amendment by No. 1405 substituted “request” for “select” in (c)(5)(B).

The 2010 amendment by identical acts Nos. 265 and 294 deleted (g)(2) and (3);

and, in (g), inserted “lottery” and substituted “shall be added to” for “is not.”

The 2011 amendment by No. 207 rewrote (f)(1); and added “living in the same . . . commission or the employee” at the end of (f)(1)(C).

The 2011 amendment by No. 1180 rewrote (g).

23-115-404. Confidential information.

(a)(1) Except as provided in subdivision (a)(2) of this section, the Arkansas Lottery Commission shall comply with the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2) The following records or information shall be treated as confidential and are exempt from public disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.:

(A) Information pertaining to the security of lottery games and lottery operations, including without limitation:

(i) Security measures, systems, or procedures; and

(ii) Security reports; and

(B) Any records exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) The Division of Legislative Audit shall have full access to the records of the commission.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 37.

Amendments. The 2009 amendment

deleted “in the possession of the commission” preceding “shall” in the introductory language of (a)(2).

23-115-405. Intelligence sharing, reciprocal use, or restricted use agreements.

(a) The Arkansas Lottery Commission may enter into an intelligence sharing, reciprocal use, or restricted use agreement with the United States Government, law enforcement agencies, lottery regulation agen-

cies, and gaming enforcement agencies of other jurisdictions that provide for and regulate the use of information provided and received under the agreement.

(b) Records, documents, and information in the possession of the commission received under subsection (a) of this section are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., and shall not be released without the permission of the person or agency providing the records, documents, and information.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-406. Authority of local government.

(a)(1) The authority of local government concerning all matters relating to the operation of lotteries is preempted by this chapter.

(2) Local government shall not take any action, including without limitation the adoption of an ordinance, relating to the operation of lotteries.

(b) This section does not prohibit local government from requiring a retailer to obtain an occupational license for any business unrelated to the sale of tickets or shares.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-407. Video lotteries prohibited.

A video lottery shall not be used as part of a lottery under this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-408. Video lotteries by institution or facility governed by other wagering laws prohibited.

This chapter does not permit the use of a video lottery for any purposes by any institution or facility governed by the:

- (1) Arkansas Horse Racing Law, § 23-110-101 et seq.;
- (2) Arkansas Greyhound Racing Law, § 23-111-101 et seq.; or
- (3) Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, § 23-113-101 et seq.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-409. Laws under other wagering chapters not affected.

This chapter does not alter wagering that may be conducted under the Arkansas Horse Racing Law, § 23-110-101 et seq., the Arkansas Greyhound Racing Law, § 23-111-101 et seq., or the Local Option Horse

Racing and Greyhound Racing Electronic Games of Skill Act, § 23-113-101 et seq.

History. Acts 2009, No. 1405, § 38.

23-115-410. Compulsive gambling disorder treatment and educational programs.

(a) The Arkansas Lottery Commission shall provide an annual amount of at least two hundred thousand dollars (\$200,000) for:

- (1) Compulsive gambling disorder treatment programs; and
- (2) Compulsive gambling disorder educational programs.

(b)(1) The commission shall work together with the Department of Human Services to implement the compulsive gambling disorder treatment programs and the compulsive gambling disorder educational programs under this section.

(2) The commission may contract with the department for providing all services related to and administration of the compulsive gambling disorder treatment programs and the compulsive gambling disorder educational programs.

(3) As part of its compulsive gambling disorder treatment and educational programs, the department shall make available a toll-free helpline telephone number providing information and referral services concerning compulsive gambling disorders.

(4) The department may promulgate rules to administer the compulsive gambling disorder treatment programs and the compulsive gambling disorder educational programs.

(c) The commission and the department shall provide a joint report to the Arkansas Lottery Commission Legislative Oversight Committee that includes without limitation:

(1) An annual summary of the amount of funding disbursed under this section and expenditures from the funding;

(2) A summary of what the compulsive gambling disorder treatment programs and compulsive gambling disorder educational programs provide; and

(3) The recommendations of the commission and the department for changes in the programs or funding.

History. Acts 2010, No. 265, § 29; 2010, No. 294, § 29; 2011, No. 207, § 28; 2011, No. 1179, § 2.

Amendments. The 2011 amendment by No. 207 added (c).

The 2011 amendment by No. 1179 inserted (b)(3) and redesignated the following subdivision accordingly.

SUBCHAPTER 5 — VENDORS**SECTION.**

23-115-501. Vendors — Requirements when submitting a bid, proposal, or offer — Major procurement contract.

23-115-502. Vendor — Performance bond or letter of credit.

SECTION.

23-115-503. Cancellation, suspension, revocation, or termination of major procurement contract.

23-115-504. Political contributions by vendors.

Effective Dates. Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-501. Vendors — Requirements when submitting a bid, proposal, or offer — Major procurement contract.

(a) The Arkansas Lottery Commission shall investigate the financial responsibility, security, and integrity of a vendor who is a finalist in submitting a bid, proposal, or offer as part of a major procurement contract.

(b) At the time of submitting a bid, proposal, or offer to the commission, the commission shall require the following items:

(1) A disclosure of the vendor's name and address and, as applicable, the names and addresses of the following:

(A)(i) If the vendor is a corporation, the officers, directors, and each stockholder of more than a ten percent (10%) interest in the corporation.

(ii) However, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of the securities need be disclosed;

(B) If the vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust;

(C) If the vendor is an association, the members, officers, and directors; and

(D) If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers;

(2) A disclosure of all the states and jurisdictions in which the vendor does business and the nature of the business for each state or jurisdiction;

(3) A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including without limitation lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction;

(4)(A) A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license of any kind or had fines or penalties assessed to the vendor's license, contract, or operation and the disposition of each instance in each state or jurisdiction.

(B) If any lottery or gaming license or contract has been revoked or has not been renewed or any lottery or gaming license or application has been either denied or is pending and has remained pending for more than six (6) months, all of the facts and circumstances underlying the failure to receive a license shall be disclosed;

(5)(A) A disclosure of the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the vendor for any felony or any other criminal offense other than a traffic violation committed by the persons identified under subdivision (b)(1) of this section.

(B)(i) The commission may request that any or all of the persons identified under subdivision (b)(1) of this section undergo a state and federal criminal background check.

(ii) If requested, a state and federal criminal background check shall be conducted in the manner under § 23-115-601(e);

(6) A disclosure of the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including without limitation bonded indebtedness, and any pending litigation of the vendor;

(7) A disclosure of the vendor's most recent financial report, including any reports on internal control over financial reporting, and the

most recent audit report of the vendor's operation as a service organization; and

(8) Additional disclosures and information that the commission may determine to be appropriate for the procurement involved.

(c) If any portion of a vendor's contract is subcontracted, the vendor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a vendor.

(d)(1) The commission shall not enter into a major procurement contract with a vendor that:

(A) Has not complied with the disclosure requirements described in subsection (b) of this section;

(B) Has been found guilty of a felony related to the security or integrity of a lottery in this or any other jurisdiction; or

(C) Has an ownership interest in an entity that has supplied lottery goods or services under contract to the commission regarding the request for proposals pertaining to those particular goods or services.

(2) The commission may terminate a major procurement contract with a vendor that does not comply with requirements for periodically updating disclosures during the tenure of the major procurement contract as may be specified in the major procurement contract.

(3) This section shall be construed broadly and liberally to achieve full disclosure of all information necessary to allow for a full and complete evaluation by the commission of the competence, integrity, background, and character of vendors for major procurement contracts.

(e)(1) A vendor who provides or proposes to provide goods or services under a major procurement contract shall not provide a gift or compensation to:

(A) The Director of the Arkansas Lottery Commission, a commission member, a commission employee, or a member of the Arkansas Lottery Commission Legislative Oversight Committee; or

(B) A member of the immediate family of the director, a commission member, a commission employee, or a member of the Arkansas Lottery Commission Legislative Oversight Committee.

(2)(A) Any person who knowingly violates subdivision (e)(1) of this section shall be guilty of a Class A misdemeanor.

(B)(i) The Arkansas Ethics Commission shall also have the authority to investigate and address alleged violations of subdivision (e)(1) of this section.

(ii) The Arkansas Ethics Commission shall have the same power and authority to enforce the provisions of subdivision (e)(1) of this section as granted to it under §§ 7-6-217 and 7-6-218.

(f)(1) A public official shall not knowingly own a financial interest in a vendor.

(2)(A) If a public official becomes aware that he or she owns a financial interest in a vendor, the public official shall divest the financial interest as soon as possible.

(B) A public official shall not divest the financial interest to a member of his or her immediate family.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 39. by No. 1405 rewrote the introductory language of (e)(1) and (e)(2).

Amendments. The 2009 amendment

23-115-502. Vendor — Performance bond or letter of credit.

(a)(1) At the execution of the major procurement contract with the Arkansas Lottery Commission, each vendor shall post a performance bond or letter of credit from a bank or credit provider acceptable to the commission in an amount as deemed necessary by the commission for that particular bid or major procurement contract.

(2) In lieu of the bond, to assure the faithful performance of its obligations, a vendor may deposit and maintain with the commission securities that are:

(A) Interest bearing or accruing; and

(B) Rated in one (1) of the three (3) highest classifications by an established, nationally recognized investment rating service.

(3) Securities eligible under this section are limited to:

(A) Certificates of deposit in an amount fully insured by the Federal Deposit Insurance Corporation issued by solvent banks or savings associations, if the solvent banks or savings associations are:

(i) Approved by the commission; and

(ii) Organized and existing under the laws of this state or under the laws of the United States;

(B) United States Government bonds, notes, and bills for which the full faith and credit of the United States Government is pledged for the payment of principal and interest;

(C) Federal agency securities by an agency or instrumentality of the United States Government; and

(D)(i) Corporate bonds approved by the commission.

(ii) The entity that issued the bonds shall not be an affiliate or subsidiary of the depositor.

(4) The securities shall be held in trust and shall at all times be in an amount as deemed necessary by the commission for the particular bid or major procurement contract.

(b)(1) Each vendor shall be qualified to do business in this state and shall file appropriate tax returns as provided by the laws of this state.

(2) All major procurement contracts under this section shall be governed by the laws of this state except as provided in this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 40. **Amendments.** The 2009 amendment by No. 1405 rewrote (a)(4).

23-115-503. Cancellation, suspension, revocation, or termination of major procurement contract.

(a) A major procurement contract executed by the Arkansas Lottery Commission under this chapter shall specify the reasons for which the major procurement contract may be canceled, suspended, revoked, or

terminated by the commission. The reasons shall include without limitation:

- (1) Commission of a violation of this chapter or a rule of the commission;
- (2) Commission of any fraud, deceit, or misrepresentation;
- (3) Conduct prejudicial to public confidence in a lottery;
- (4) The vendor's filing for or being placed in bankruptcy or receivership; or
- (5) Any material change as determined in the sole discretion of the commission in any matter considered by the commission in executing the major procurement contract with the vendor.

(b)(1) If upon approval of the commission the Director of the Arkansas Lottery Commission or his or her designee determines that cancellation, denial, revocation, suspension, or rejection of renewal of a major procurement contract is in the best interest of lotteries, the public welfare, or the State of Arkansas, the director or his or her designee may cancel, suspend, revoke, or terminate, after notice and a right to a hearing, a major procurement contract issued under this chapter.

(2) The major procurement contract may be temporarily suspended by the director or his or her designee without commission approval or prior notice pending a hearing.

(3) A major procurement contract may be suspended, revoked, or terminated by the director or his or her designee for any one (1) or more of the reasons enumerated in this section.

(c) Hearings under this section shall be held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-504. Political contributions by vendors.

(a) The General Assembly finds:

(1) That the integrity of the Arkansas Lottery Commission and lotteries is of utmost importance; and

(2) That the people of the State of Arkansas should have confidence and be assured that public officials are free of any untoward political influence by vendors.

(b) A vendor awarded a major procurement contract for lottery equipment or tickets or an officer, employee, or agent of a vendor awarded a major procurement contract for lottery equipment or tickets shall not make a political contribution to a public official or a candidate for election as a public official.

(c) A vendor proposing to provide goods or services under a major procurement contract or an officer, employee, or agent of a vendor proposing to provide goods or services under a major procurement contract shall not:

(1) Make a political contribution to a public official or a candidate for election as a public official while the award of the major procurement contract is pending; and

(2) While the award of the major procurement contract is pending, promise to make a political contribution to a public official or a candidate for election as a public official after the award of the major procurement contract.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 41.

Amendments. The 2009 amendment by No. 1405 rewrote (b); and added (c).

SUBCHAPTER 6 — RETAILERS

SECTION.

23-115-601. Retailers.

23-115-602. Retailer license.

23-115-603. Fidelity fund — Retailer fee — Reserve account to cover losses — Retailer bond.

23-115-604. Cancellation, suspension, revocation, or termination of retailer license.

23-115-605. Retailers — Fiduciary duty — Protection against loss.

23-115-606. Retailer — Rental payments based on percentage of retail sales.

SECTION.

23-115-607. Business closure authority — Notice.

23-115-608. Administrative hearing.

23-115-609. Judicial relief.

23-115-610. Business closure procedure.

23-115-611. Revocation and suspension of business license.

23-115-612. Authority to promulgate rules.

Effective Dates. Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill

is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of

potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1173, § 18: Apr. 12, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining post-secondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsec-

ondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2013, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-601. Retailers.

(a) The General Assembly recognizes that to conduct a successful lottery, the Arkansas Lottery Commission must develop and maintain a statewide network of retailers that will serve the public convenience and promote the sale of tickets or shares and the playing of lotteries while ensuring the integrity of lottery operations, games, and activities.

(b) The commission shall make every effort to provide small retailers a chance to participate in the sales of tickets or shares.

(c) The commission shall provide for compensation to retailers in the form of commissions in an amount of not less than five percent (5%) of gross sales of tickets and shares and may provide for other forms of compensation for services rendered in the sale or cashing of tickets or shares.

(d)(1) For purposes of display, the commission shall issue a license to each person that it licenses as a retailer.

(2)(A) Every retailer shall post and keep conspicuously displayed in a location on the premises accessible to the public its license.

(B) A license is not assignable or transferable.

(e)(1) A person considered as a retailer shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check, to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The commission shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant.

(f)(1) The commission shall develop a list of objective criteria upon which the qualification of retailers shall be based.

(2) The commission shall develop separate criteria to govern the selection of retailers of instant tickets.

(3) In developing the criteria, the commission shall consider certain factors, including without limitation:

(A) The applicant's financial responsibility;

(B) Security of the applicant's place of business or activity;

(C) Accessibility to the public;

(D) The applicant's integrity; and

(E) The applicant's reputation.

(4) The commission shall not consider political affiliation, activities, or monetary contributions to political organizations or candidates for any public office.

(5) The criteria shall include without limitation the following:

(A)(i) The applicant shall be current in filing all applicable tax returns to the State of Arkansas and in payment of all taxes, interest, and penalties owed to the State of Arkansas, excluding items under formal appeal under applicable statutes.

(ii) The Department of Finance and Administration shall provide to the commission the information required under subdivision (f)(5)(A)(i) of this section;

(B) The commission shall not select as a retailer any person who:

(i) Has been convicted of a criminal offense related to the security or integrity of a lottery in this or any other jurisdiction;

(ii)(a) Has been convicted of any illegal gambling activity, false statements, false swearing, or perjury in this or any other jurisdiction or convicted of any crime punishable by more than one (1) year of imprisonment or a fine of more than one thousand dollars (\$1,000), or both.

(b) Subdivision (f)(5)(B)(ii)(a) of this section shall not apply if the person's civil rights have been restored and at least five (5) years have elapsed from the date of the completion of the sentence without a subsequent conviction of a crime described in subdivision (f)(5)(B)(ii)(a) of this section;

(iii) Has been found to have violated this chapter or any rule, policy, or procedure of the commission unless:

(a) Ten (10) years have passed since the violation; or

(b) The commission finds the violation both minor and unintentional in nature;

(iv) Is a vendor or an employee or agent of a vendor doing business with the commission;

(v) Is a member of the commission, or a member of the immediate family of a member of the commission;

(vi) Has made a statement of material fact to the commission knowing the statement to be false; or

(vii)(a) Is engaged exclusively in the business of selling tickets or shares.

(b) Subdivision (f)(5)(B)(vii)(a) of this section does not preclude the commission from selling or giving away tickets or shares for promotional purposes;

(C) A person applying to become a retailer shall be charged a uniform application fee determined by rule for each lottery outlet;

(D) All retailer licenses may be renewable annually in the discretion of the commission unless canceled or terminated by the commission; and

(E) The commission may establish by rule a reasonable fee for the issuance, reissuance, fine, or penalty associated with the process, procedures, or enforcement necessary to issue or maintain a retailer license, including without limitation to cover the cost of:

(i) An initial and any subsequent state and federal criminal background check under this subchapter; and

(ii) The reporting, communications technology, and banking processes necessary to implement and enforce this subchapter.

(g)(1) A retailer or an applicant to be a retailer shall not provide a gift or compensation to:

(A) The Director of the Arkansas Lottery Commission, a commission member, or a commission employee; or

(B) A member of the immediate family of the director, a commission member, or a commission employee.

(2)(A) Any person who knowingly violates subdivision (g)(1) of this section shall be guilty of a Class A misdemeanor.

(B)(i) The Arkansas Ethics Commission shall also have the authority to investigate and address alleged violations of subdivision (g)(1) of this section.

(ii) The Arkansas Ethics Commission shall have the same power and authority to enforce the provisions of subdivision (g)(1) of this section as granted to it under §§ 7-6-217 and 7-6-218.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 42; 2010, No. 265, § 30; 2010, No. 294, § 30; 2013, No. 1173, § 16.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2009, No. 1405. Former subsection (g) of this section was enacted by Acts 2009, Nos. 605 and 606 to read as follows:

“(g)(1) A retailer or an applicant to be a

retailer shall not provide a gift to:

“(A) The Director of the Arkansas Lottery Commission, a commission member, or a commission employee; or

“(B) A member of the immediate family of the director, a commission member, or a commission employee.

“(2) This subsection shall be enforced and penalties shall be assessed in the same manner as § 21-8-301 et seq.”

Amendments. The 2009 amendment

by No. 1405 inserted “or compensation” in the introductory language of (g)(1); and rewrote (g)(2).

The 2010 amendment by identical acts Nos. 265 and 294 inserted “member of the commission, or a” in (f)(5)(B)(v).

The 2013 amendment deleted (f)(5)(C)(ii); added “and” at the end of (f)(5)(D); and added (f)(5)(E).

23-115-602. Retailer license.

(a) A retailer license is not transferable or assignable.

(b) A retailer shall not contract with any person for lottery goods or services except with the approval of the Arkansas Lottery Commission.

(c) Tickets and shares shall be sold only by the retailer stated on the retailer’s license issued by the commission under this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-603. Fidelity fund — Retailer fee — Reserve account to cover losses — Retailer bond.

(a)(1) The Arkansas Lottery Commission shall establish a fidelity fund separate from all other funds and shall assess each retailer an annual fee not to exceed one hundred dollars (\$100) per sales location to be deposited into the fidelity fund.

(2) Moneys deposited into the fidelity fund may be:

(A) Invested or deposited into one (1) or more interest-bearing accounts;

(B) Used to cover losses the commission experiences due to non-feasance, misfeasance, or malfeasance of a retailer; and

(C) Used to purchase blanket bonds covering the commission against losses from all retailers.

(3) At the end of each fiscal year, the commission shall pay to the trust account managed and maintained by the Department of Higher Education any amount in the fidelity fund that exceeds five hundred thousand dollars (\$500,000), and the funds shall be considered net proceeds from a lottery.

(b)(1) A reserve account may be established as a general operating expense to cover amounts deemed uncollectable.

(2) The commission shall establish procedures for minimizing any losses that may be deemed uncollectable and shall exercise and exhaust all available options in those procedures before writing off amounts to this account.

(c)(1) The commission shall require a retailer to post an appropriate bond, as determined by the commission, using an insurance company acceptable to the commission.

(2) If applicable, the amount of the bond shall not exceed the district sales average of tickets for two (2) billing periods.

(d)(1) In its discretion, the commission may allow a retailer to deposit and maintain with the commission securities that are interest-bearing or accruing.

(2) Securities eligible under this subsection are limited to:

(A) Certificates of deposit in an amount fully insured by the Federal Deposit Insurance Corporation issued by solvent banks or savings associations organized and existing under the laws of this state or under the laws of the United States;

(B) United States Government bonds, notes, and bills for which the full faith and credit of the United States Government is pledged for the payment of principal and interest; or

(C) Federal agency securities by an agency or instrumentality of the United States Government.

(3) The securities shall be held in trust in the name of the commission.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-604. Cancellation, suspension, revocation, or termination of retailer license.

(a) A retailer license executed by the Arkansas Lottery Commission under this chapter shall specify the reasons for which the retailer license may be canceled, suspended, revoked, or terminated by the commission. The reasons shall include without limitation:

(1) Commission of a violation of this chapter or a rule of the commission;

(2) Failure to accurately or timely account for tickets, lottery games, revenues, or prizes as required by the commission;

(3) Commission of any fraud, deceit, or misrepresentation;

(4) Insufficient sales;

(5) Conduct prejudicial to public confidence in a lottery;

(6) The retailer's filing for or being placed in bankruptcy or receivership;

(7) Any material change as determined in the sole discretion of the commission in any matter considered by the commission in executing the license with the retailer; or

(8) Failure to meet any of the objective criteria established by the commission under this chapter.

(b)(1) If upon approval of the commission the Director of the Arkansas Lottery Commission or his or her designee determines that cancellation, denial, revocation, suspension, or rejection of renewal of a retailer license is in the best interest of lotteries, the public welfare, or the State of Arkansas, the director or his or her designee may cancel, suspend, revoke, or terminate, after notice and a right to a hearing, a retailer license issued under this chapter.

(2) The retailer license may be temporarily suspended by the director or his or her designee without commission approval or prior notice pending a hearing.

(3) A retailer license may be suspended, revoked, or terminated by the director or his or her designee for any one (1) or more of the reasons enumerated in subsection (a) of this section.

(4) Hearings under subsection (b) of this section shall be held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-605. Retailers — Fiduciary duty — Protection against loss.

(a)(1) All proceeds from the sale of tickets or shares constitute a trust fund until paid to the Arkansas Lottery Commission either directly or through the commission's authorized collection representative.

(2) A retailer and officers of a retailer's business have a fiduciary duty to preserve and account for retail lottery proceeds, and retailers are personally liable for all lottery proceeds.

(3) For the purpose of this section, lottery proceeds include without limitation:

- (A) Unsold instant tickets received by a retailer;
- (B) Cash proceeds of the sale of any lottery products;
- (C) Net of allowable sales commissions; and
- (D) Credit for lottery prizes paid to winners by retailers.

(4) Sales proceeds and unused instant tickets shall be delivered to the commission or its authorized collection representative upon demand.

(b)(1) The commission shall require retailers to place all lottery proceeds due the commission in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date they are paid to the commission.

(2) At the time of the deposit, lottery proceeds shall be deemed to be the property of the commission.

(3) The commission may require a retailer to establish a single separate electronic funds transfer account when available for the purpose of:

- (A) Receiving moneys from ticket or share sales;
- (B) Making payments to the commission; and
- (C) Receiving payments for the commission.

(4) Unless authorized in writing by the commission, each retailer shall establish a separate bank account for lottery proceeds that shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.

(c) When an individual who receives proceeds from the sale of tickets or shares in the capacity of a retailer becomes insolvent or dies insolvent, the proceeds due the commission from the individual or his or her estate have preference over all debts or demands.

(d) If the commission determines that a retailer failed to comply with subsection (b) of this section three (3) times within any consecutive twenty-four-month period, the commission may pursue business closure against the retailer under this subchapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 43.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2009, No. 1405. Former subsection (d) of this section was enacted by Acts 2009, Nos. 605 and 606 to read as follows:

“(d) If the commission determines that a retailer failed to comply with subsection (b) of this section three (3) times within

any consecutive twenty-four-month period, the commission may refer the retailer to the Department of Finance and Administration with a recommendation that the department pursue business closure against the retailer as a noncompliant taxpayer as provided in § 26-18-1001 et seq.”.

Amendments. The 2009 amendment by No. 1405 rewrote (d).

23-115-606. Retailer — Rental payments based on percentage of retail sales.

If a retailer's rental payments for the business premises are contractually computed, in whole or in part, on the basis of a percentage of retail sales and the computation of retail sales is not explicitly defined to include sales of tickets or shares, only the compensation received by the retailer from the Arkansas Lottery Commission may be considered the amount of the lottery retail sale for purposes of computing the rental payment.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-607. Business closure authority — Notice.

(a) In addition to all other remedies provided by law for failure to remit lottery proceeds due the Arkansas Lottery Commission, the Director of the Arkansas Lottery Commission may close the business of a retailer if the retailer fails to comply with § 23-115-605(b) three (3) times within any consecutive twenty-four-month period.

(b)(1) The director shall give notice to the retailer that the third delinquency in complying with § 23-115-605(b) in any consecutive twenty-four-month period may result in the closure of the business.

(2) The notice shall be in writing and delivered to the retailer by:

(A) The United States Postal Service; or

(B) Hand delivery.

(c)(1) If the retailer has a third delinquency in complying with § 23-115-605(b) in any consecutive twenty-four-month period after the issuance of the notice provided in subsection (b) of this section and the director chooses to close the business, the director shall notify the retailer by certified mail or by hand delivery that the business will be closed within five (5) business days from the date of receipt of the notice unless the retailer avoids closure of the business under subsection (d) of this section.

(2) If the fifth day falls on a Saturday, Sunday, or legal holiday, the performance of an act to avoid business closure under subsection (d) of this section is timely when performed on the next succeeding business day that is not a Saturday, Sunday, or legal holiday.

(d) A retailer may avoid closure of the business by:

- (1) Remitting the delinquent lottery proceeds; or
- (2) Entering into a written payment agreement approved by the director to satisfy the lottery proceeds delinquency.

History. Acts 2009, No. 1405, § 44.

23-115-608. Administrative hearing.

(a) A retailer may request an administrative hearing concerning the decision of the Director of the Arkansas Lottery Commission to close the retailer's business.

(b) Within five (5) business days after the delivery or attempted delivery of the notice required by § 23-115-607(c), the retailer may file a written protest, signed by the retailer or his or her authorized agent, with the director stating the reasons for opposing the closure of the business and requesting an administrative hearing.

(c)(1) A retailer may request that an administrative hearing be held:

(A) In person;

(B) By telephone;

(C) Upon written documents furnished by the retailer; or

(D) Upon written documents and any evidence to be produced by the retailer at an administrative hearing.

(2) The director may determine whether an administrative hearing at which testimony is to be presented will be conducted in person or by telephone.

(3) A retailer who requests an administrative hearing based upon written documents is not entitled to any other administrative hearing before the rendering of the administrative decision.

(d) The administrative hearing shall be conducted by a hearing officer appointed by the director.

(e)(1) The hearing officer shall:

(A) Set the time and place for a hearing; and

(B) Give the retailer notice of the hearing.

(2) At the administrative hearing, the retailer may:

(A) Be represented by an authorized representative; and

(B) Present evidence in support of his or her position.

(f) The administrative hearing shall be held within fourteen (14) calendar days of receipt by the director of the request for hearing.

(g) The administrative hearing and determinations made by the hearing officer under this subchapter are subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(h) The defense or defenses to the closure of a business under this subchapter are:

(1) Written proof that the retailer remitted the delinquent lottery proceeds due; or

(2) That the retailer has entered into a written payment agreement, approved by the director, to satisfy the lottery proceeds delinquency.

(i) The decision of the hearing officer shall be in writing with copies delivered to the retailer and the director by the United States Postal Service or by hand delivery.

History. Acts 2009, No. 1405, § 44.

23-115-609. Judicial relief.

(a)(1) If the decision of the hearing officer under § 23-115-608 is to affirm the closure of the business, the decision shall be submitted in writing and delivered by the United States Postal Service or by hand to the retailer.

(2) The retailer may seek judicial relief from the decision by filing suit within twenty (20) calendar days of the date of the decision.

(b)(1) Jurisdiction for a suit under this section to contest a determination of the director shall be in Pulaski County Circuit Court, where the matter shall be tried de novo.

(2)(A) If the circuit court finds that the business closure order was appropriately issued by the director, the circuit court shall issue an injunction against the retailer prohibiting the further operation of the business.

(B) If a business subject to an injunction issued by the circuit court as provided in this subchapter continues in operation, upon conviction, any person responsible for the decision to operate the business after the issuance of the injunction shall be guilty of a Class A misdemeanor.

(3) An appeal may be made from the circuit court to the appropriate appellate court, as provided by law.

(c) The procedures established by § 23-115-608 and this section are the sole methods for seeking relief from a written decision to close the business of a retailer for failure to comply with § 23-115-605(b).

(d) The decision to close the business of a retailer shall be final:

(1) If the retailer fails to:

(A) Request an administrative hearing under § 23-115-608; or

(B) Seek judicial relief under this section; or

(2) Upon the final decision of a circuit court or an appellate court.

(e)(1) It is unlawful for a business to continue in operation after a business closure order is issued that is:

(A) Upheld on appeal under this subchapter; or

(B) Not appealed by the retailer under this subchapter.

(2) Upon conviction, any person responsible for the decision to operate the business in violation of this subchapter shall be guilty of a Class A misdemeanor.

History. Acts 2009, No. 1405, § 44.

23-115-610. Business closure procedure.

(a) If a retailer fails to timely seek administrative or judicial review of a business closure decision or if the business closure decision is affirmed after administrative or judicial review, the Director of the Arkansas Lottery Commission shall direct the Department of Finance and Administration to affix a written notice to all entrances of the business that:

- (1) Identifies the business as being subject to a business closure order; and
- (2) States that the business is prohibited from further operation.
- (b) The Director of the Arkansas Lottery Commission may also direct that the business be locked or otherwise secured so that it may not be operated.
- (c) The Director of the Department of Finance and Administration may request the assistance of the Department of Arkansas State Police or any state or local law enforcement official to post the notice or to secure the business as authorized in this section.
- (d) The commission may reimburse the Department of Finance and Administration for the costs of administering this section after review of the amount by the Arkansas Lottery Commission Legislative Oversight Committee.

History. Acts 2009, No. 1405, § 44.

23-115-611. Revocation and suspension of business license.

- (a) The closure of a business under this subchapter shall be grounds for cancellation, suspension, revocation, or termination of a retailer license under § 23-115-604.
- (b) The closure of a business under this subchapter shall be grounds for the suspension or revocation of any business license granted under the laws of the State of Arkansas, excluding professional licenses.
- (c) After the decision to close the retailer’s business becomes final, the Director of the Arkansas Lottery Commission shall contact the appropriate administrative body responsible for granting licenses to operate the business and report the closure of the business.

History. Acts 2009, No. 1405, § 44.

23-115-612. Authority to promulgate rules.

The Arkansas Lottery Commission may promulgate rules necessary for the implementation and enforcement of this subchapter.

History. Acts 2009, No. 1405, § 44.

SUBCHAPTER 7 — PROCUREMENTS

SECTION.
23-115-701. Procurements — Major pro-

curement contracts —
Competitive bidding.

Effective Dates. Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly ap-

proved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that

will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the

Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-701. Procurements — Major procurement contracts — Competitive bidding.

(a)(1) The Arkansas Lottery Commission may purchase, lease, or lease-purchase goods or services as necessary for effectuating the purposes of this chapter.

(2) The commission may make procurements that integrate functions, including without limitation:

- (A) Lottery design;
- (B) Ticket distribution to retailers;
- (C) Supply of goods and services; and
- (D) Advertising.

(3) In all procurement decisions, the commission shall:

(A) Take into account the particularly sensitive nature of lotteries; and

(B) Act to promote and ensure:

(i) Security, honesty, fairness, and integrity in the operation and administration of lotteries; and

(ii) The objectives of raising net proceeds for the benefit of scholarships and grants.

(b) Except as provided in subsections (c) and (d) of this section, the commission shall comply with the Arkansas Procurement Law, § 19-11-201 et seq.

(c)(1) The commission shall adopt rules concerning the procurement process for major procurement contracts.

(2) The commission shall arrange for the solicitation and receipt of competitive bids for major procurement contracts.

(3) Except for printing, stationery, and supplies under Arkansas Constitution, Amendment 54, the commission is not required to accept the lowest responsible bid for major procurement contracts but shall select a bid that provides the greatest long-term benefit to the state, the greatest integrity for the commission, and the best service and products for the public.

(d) In any bidding process, the commission may administer its own bidding and procurement or may utilize the services of the Department of Finance and Administration.

(e)(1) Each proposed major procurement contract and each amendment or modification to a proposed or executed major procurement contract shall be filed with the Arkansas Lottery Commission Legislative Oversight Committee for review at least thirty (30) days before the execution date of the major procurement contract or the amendment or modification to a proposed or executed major procurement contract.

(2) The Arkansas Lottery Commission Legislative Oversight Committee shall provide the commission with its review as to the propriety of the major procurement contract and each amendment or modification to a proposed or executed major procurement contract within thirty (30) days after receipt of the proposed major procurement contract or the amendment or modification to a proposed or executed major procurement contract.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 45; 2010, No. 265, § 31; 2010, No. 294, § 31.

Amendments. The 2009 amendment by No. 1405 substituted "Except for printing, stationery, and supplies under Arkansas Constitution, Amendment 54, the" for "The" in (c)(3).

The 2010 amendment by identical acts Nos. 265 and 294, in (e)(1) and (2), in-

serted "and each amendment or modification to a proposed or executed major procurement contract" and added "or the amendment or modification to a proposed or executed major procurement contract" at the end; and inserted "at least thirty (30) days" in (e)(1).

SUBCHAPTER 8 — LOTTERY PROCEEDS

SECTION.

23-115-801. Lottery proceeds.

23-115-802. Scholarship Shortfall Reserve Trust Account.

SECTION.

23-115-803. Disposition of funds.

Effective Dates. Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at

the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to

receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and

safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 1173, § 18: Apr. 12, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining post-secondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2013, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-115-801. Lottery proceeds.

(a)(1) All lottery proceeds are the property of the Arkansas Lottery Commission.

(2)(A) The commission shall pay its operating expenses from its lottery proceeds.

(B)(i) An amount of lottery proceeds determined by the commission to maximize net proceeds shall be made available as prize money.

(ii)(a) Subdivision (a)(2)(B)(i) of this section does not create any lien, entitlement, cause of action, or other private right.

(b) In setting the terms of a lottery, the commission shall determine any rights of holders of tickets or shares.

(3) The percentage of lottery proceeds determined by the commission to be net proceeds shall equal an amount determined by the commission to maximize net proceeds.

(b)(1) On or before the fifteenth day of each month, the commission shall deposit the net proceeds from the lottery into one (1) or more trust accounts at one (1) or more financial institutions.

(2) The commission shall follow the investment policy guidelines of the State Board of Finance in selecting a financial institution and managing the net proceeds from the lottery deposited into a trust account.

(c)(1) The Director of the Department of Higher Education shall certify to the commission the amount of net proceeds from the lottery needed to fund the scholarships awarded to recipients under § 6-85-201 et seq. for each semester of an academic year.

(2)(A)(i) The commission shall transfer the funds requested by the director under subdivision (c)(1) of this section into one (1) or more trust accounts at one (1) or more financial institutions meeting the requirements of subdivision (b)(2) of this section maintained by the department.

(ii) The director shall disburse trust account funds only in the name of the recipient:

(a) To an approved institution of higher education; or

(b) If a recipient transfers to another approved institution of higher education, to the approved institution of higher education where the recipient transferred.

(3) By August 1 of each year, the director shall provide to the commission and to the Arkansas Lottery Commission Legislative Oversight Committee for the academic year just ended an accounting of all trust accounts maintained by the department, including without limitation:

(A) Total deposits to all trust accounts;

(B) Total disbursements from the trust accounts; and

(C) The balance remaining in the trust accounts.

(d)(1) The General Assembly finds that:

(A) The administration of scholarships with proceeds from the lottery are expenses of the commission; and

(B) Because the department has the expertise and experienced staff needed to efficiently and appropriately administer the scholarships, the commission shall use the services of the department to administer scholarships funded with net proceeds from the lottery.

(2)(A) Annually by April 1, the department shall provide to the commission and to the Arkansas Lottery Commission Legislative Oversight Committee the department's budget for the administrative expenditures allowed under this subsection.

(B) Annually by October 31, the department shall provide an invoice to the commission for reimbursement of the administrative

expenditures allowed under this subsection, including without limitation:

(i) For each employee the:

(a) Type of position, whether full-time, part-time, permanent, or temporary; and

(b) Salary paid;

(ii) A description of other expenditures requested in the invoice; and

(iii) An explanation of the increase, if any, of actual expenditures over the budgeted expenditures.

(3)(A) Annually by November 1, the commission shall file a copy of the invoice with the Arkansas Lottery Commission Legislative Oversight Committee for its review.

(B) The Arkansas Lottery Commission Legislative Oversight Committee shall review the invoice and forward its comments, if any, to the commission.

(C) The commission shall reimburse the department for the costs of administering the scholarship awards funded with net proceeds from the lottery after the Arkansas Lottery Commission Legislative Oversight Committee's review under this subsection.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2010, No. 265, § 32; 2010, No. 294, § 32; 2013, No. 1173, § 17.

A.C.R.C. Notes. The 2013 amendment by Act 1173 omitted the following language from (d) without striking through the language to indicate its repeal: "(4) The department shall refund to the Higher Education Grants Fund Account the amount of a reimbursement received from the commission under this subsection for services provided and funded from the fund account."

Amendments. The 2010 amendment

by identical acts Nos. 265 and 294 deleted the (c)(1)(A) designation and (c)(1)(B); and inserted "each semester of" near the end of (c)(1).

The 2013 amendment added present (d)(2), (d)(3)(A) and (d)(3)(B); redesignated former (d)(2) as present (d)(3)(C); substituted "the Arkansas Lottery Commission Legislative Oversight Committee's review under this subsection" for "review of the reimbursement amount by the Arkansas Lottery Commission Legislative Oversight Committee" in (d)(3)(C).

23-115-802. Scholarship Shortfall Reserve Trust Account.

(a) The Arkansas Lottery Commission shall maintain a Scholarship Shortfall Reserve Trust Account.

(b)(1) An amount equal to four percent (4%) of the total amount of net proceeds disbursed during the preceding fiscal year in the form of scholarships and grants for higher education shall be deposited from lottery proceeds each year until the amount in the account equals twenty million dollars (\$20,000,000).

(2) Thereafter, only an amount necessary to maintain the account in an amount equal to twenty million dollars (\$20,000,000) shall be deposited into the account.

(3) Any amount in the trust account exceeding twenty million dollars (\$20,000,000) shall be considered net proceeds and shall be deposited

annually into one (1) or more trust accounts at one (1) or more financial institutions by July 1 of each year.

(c) If net proceeds in any year are not sufficient to meet the amount allocated for higher education scholarships, the account may be drawn upon to meet the deficiency.

(d) This section is effective on July 1, 2010.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 46; 2010, No. 265, §§ 33, 34; 2010, No. 294, §§ 33, 34.

Amendments. The 2009 amendment by No. 1405 substituted “four percent (4%)” for “ten percent (10%)” in (b)(1);

substituted “twenty million dollars (\$20,000,000)” for “fifty million dollars (\$50,000,000)” in (b)(1) and (b)(2); and added (b)(3).

The 2010 amendment by identical acts Nos. 265 and 294 substituted “account” for “fund” in (b)(3); and deleted (c)(2).

23-115-803. Disposition of funds.

(a)(1) To effectuate the Arkansas Lottery Commission’s purposes, the commission may borrow moneys from the State of Arkansas or accept and expend moneys from the State of Arkansas and shall repay any sums borrowed from the state as soon as practicable.

(2) As used in this section, “purposes” includes without limitation the payment of the initial expenses of initiation, administration, and operation of the commission and lotteries.

(3) The commission shall not issue bonds for any purpose.

(b)(1) The commission shall be self-sustaining and self-funded.

(2)(A) Except as provided in subsection (a) of this section, moneys in the General Revenue Fund Account of the State Apportionment Fund shall not be used or obligated to pay the expenses of the commission or prizes of a lottery.

(B) A claim for the payment of an expense of a lottery or prizes of a lottery shall not be made against any moneys other than moneys credited to the commission’s operating account.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

SUBCHAPTER 9 — PENALTIES

SECTION.

23-115-901. Sale of ticket or share to person under 18 years of age prohibited — Penalty.

23-115-902. Fraud — Penalty.

SECTION.

23-115-903. False statement on license application — Penalty.

23-115-904. Inconsistent statutes inapplicable.

Effective Dates. Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the

State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure

to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 207, § 31: Mar. 8, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining post-secondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lot-

tery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-901. Sale of ticket or share to person under 18 years of age prohibited — Penalty.

(a) A retailer who knowingly sells a ticket or share to a person under eighteen (18) years of age or permits a person under eighteen (18) years of age to play a lottery is guilty of a violation and subject to the following penalties:

(1) A fine not to exceed two hundred fifty dollars (\$250) for a first violation within a forty-eight-month period;

(2) For a second violation within a forty-eight-month period:

(A) A fine not to exceed five hundred dollars (\$500); and

(B) Suspension of the retailer license issued under § 23-115-601 et seq. for a period not to exceed two (2) days;

(3) For a third violation within a forty-eight-month period:

(A) A fine not to exceed one thousand dollars (\$1,000); and

(B) Suspension of the retailer license issued under § 23-115-601 et seq. for a period not to exceed seven (7) days;

(4) For a fourth or subsequent violation within a forty-eight-month period:

(A) A fine not to exceed two thousand dollars (\$2,000); and

(B) Suspension of the retailer license issued under § 23-115-601 et seq. for a period not to exceed fourteen (14) days; and

(5) For a fifth or subsequent violation within a forty-eight-month period, the retailer license issued under § 23-115-601 et seq. may be revoked.

(b) An employee of a retailer who violates this section is subject to a fine not to exceed one hundred dollars (\$100) per violation.

(c) It is an affirmative defense to a prosecution under this section that the retailer reasonably and in good faith relied upon representation of proof of age in making the sale.

(d) A person convicted of violating any provision of this section whose retailer license is suspended or revoked upon conviction shall surrender to the court his or her retailer license and the court shall transmit the retailer license to the Arkansas Lottery Commission and instruct the commission:

(1) To suspend or revoke the person's retailer license or to not renew the license; and

(2) Not to issue any new retailer license to that person for the period of time determined by the court in accordance with this section.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-902. Fraud — Penalty.

The offense of lottery fraud and penalties for a conviction of lottery fraud are provided under § 5-55-501.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2011, No. 207, § 29.

Amendments. The 2011 amendment rewrote the section.

23-115-903. False statement on license application — Penalty.

(a) A person shall not knowingly make:

(1) A material false statement in an application for a license or proposal to conduct a lottery; or

(2) A material false entry in any book or record that is compiled, maintained, or submitted to the Arkansas Lottery Commission.

(b)(1) A person who violates this section is guilty of a Class D felony.

(2) A person convicted for violating subsection (a) of this section is subject to an additional fine of not more than twenty-five thousand dollars (\$25,000) or the dollar amount of the material false entry or material false statement, whichever is greater.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-904. Inconsistent statutes inapplicable.

(a) Section 5-66-101 et seq. and all other laws and parts of laws inconsistent with this chapter are expressly declared not to apply to any person engaged in, conducting, or otherwise participating in lotteries.

(b) A person is not guilty of any criminal offense set forth in § 5-66-101 et seq. or any other law relating to illegal gambling to the extent the person relied on any rule, order, finding, or other determination by the Arkansas Lottery Commission that the activity was authorized by this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

SUBCHAPTER 10 — DEBTORS OWING MONEY TO THE STATE

SECTION.

- 23-115-1001. Legislative intent.
- 23-115-1002. Definitions.
- 23-115-1003. Collection remedy.
- 23-115-1004. List of debtors — Withholding winnings — Ranking of liens.

SECTION.

- 23-115-1005. Confidential information.
- 23-115-1006. Application.

Effective Dates. Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be imple-

mented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-1001. Legislative intent.

(a) The purposes of this subchapter are to establish:

(1) A policy and to provide a system whereby all claimant agencies of this state in conjunction with the Arkansas Lottery Commission shall cooperate in identifying debtors who owe money to the state through its various claimant agencies or to persons on whose behalf the state and its claimant agencies act and who qualify for lottery prizes under this chapter from the commission; and

(2) Procedures for setting off against any prize the sum of any debt owed to the state or to persons on whose behalf the state and its claimant agencies act.

(b) This subchapter shall be liberally construed to effectuate the purposes stated in subsection (a) of this section.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-1002. Definitions.

As used in this subchapter:

- (1) "Claimant agency" means a state agency, department, board, bureau, commission, or authority:
 - (A) To which a person owes a debt; or
 - (B) That acts on behalf of a person to collect a debt;
- (2) "Debt" means a:
 - (A) Liquidated sum due and owing any claimant agency when the sum has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for the sum; or
 - (B) Sum that is due and owing any person and is enforceable by the state;
- (3) "Debtor" means an individual owing money to or having a delinquent account with a claimant agency when the obligation has not been:
 - (A) Adjudicated as satisfied by court order;
 - (B) Set aside by court order; or
 - (C) Discharged in bankruptcy; and
- (4) "Prize" means the proceeds of any lottery prize awarded under this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-1003. Collection remedy.

The collection remedy authorized by this subchapter is in addition to and not in substitution for any other remedy available by law.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-1004. List of debtors — Withholding winnings — Ranking of liens.

- (a)(1) A claimant agency may submit to the Arkansas Lottery Commission a list of the names of all debtors owing in excess of one hundred dollars (\$100) to the claimant agency or to persons on whose behalf the claimant agency is acting.
- (2) The full amount of the debt is collectible from any prize without regard to limitations on the amounts that may be collectable in increments through garnishment or other proceedings.
- (3) The list shall constitute a valid lien upon and claim of lien against the prize of any debtor named in the list.
- (4) The list shall contain:
 - (A) The name of each debtor;

(B) The social security number of each debtor if available; and

(C) Any other information that would assist the commission in identifying each debtor named in the list.

(b)(1) The commission shall withhold any prizes subject to the lien created by this section and send notice to the winner by certified mail, return receipt requested, of the action and the reason the prizes were withheld.

(2)(A) However, if the winner appears and claims prizes in person, the commission shall notify the winner at that time by hand delivery of the action.

(B) If the debtor does not protest the withholding of the prizes in writing within thirty (30) days of receipt of the notice, the commission shall pay the prizes to the claimant agency.

(C) If the debtor protests the withholding of the prizes within thirty (30) days of receipt of the notice, the commission shall:

(i) File an action in interpleader in the circuit court of the county where the debtor resides;

(ii) Pay the disputed sum into the registry of the circuit court; and

(iii) Give notice to the claimant agency and debtor of the initiation of the action.

(c) The liens created by this section are ranked by priority as follows:

(1) Taxes due the state;

(2) Delinquent child support; and

(3) All other judgments and liens in order of the date entered or perfected.

(d) The commission is not required to deduct claimed debts from prizes paid out by retailers or entities other than the commission.

(e) Any list of debt provided under this section shall be provided periodically as the commission shall provide by rule, and the commission is not obligated to retain the lists or deduct debts appearing on the lists beyond the period determined by the rules.

(f) The commission may prescribe forms and promulgate rules it deems necessary to implement this section.

(g) The commission and any claimant agency shall incur no civil or criminal liability for good faith adherence to this section.

(h) The claimant agency shall pay the commission for all costs incurred by the commission in setting off debts in the manner provided in this subchapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-1005. Confidential information.

(a)(1) Notwithstanding any other confidentiality statute, the Arkansas Lottery Commission may provide to a claimant agency all information necessary to accomplish and effectuate the intent of this subchapter.

(2) Information shall be used by a claimant agency only in the pursuit of its debt collection duties and practices.

(b) Confidential information obtained by a claimant agency from the commission under this section shall retain its confidentiality.

(c) An employee or prior employee of a claimant agency who unlawfully discloses any information for any other purpose, except as otherwise specifically authorized by law, is guilty of a Class A misdemeanor.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-1006. Application.

This subchapter applies only to prizes of more than five hundred dollars (\$500).

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

SUBCHAPTER 11 — ARKANSAS LOTTERY COMMISSION LEGISLATIVE OVERSIGHT COMMITTEE

SECTION.

23-115-1101. Arkansas Lottery Commission Legislative Oversight Committee.

23-115-1102. Filing of information with

Arkansas Lottery Commission Legislative Oversight Committee.

Effective Dates. Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill

is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of

potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2011, No. 207, § 31: Mar. 8, 2011. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining post-secondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that

the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-115-1101. Arkansas Lottery Commission Legislative Oversight Committee.

(a) The Arkansas Lottery Commission Legislative Oversight Committee is established.

(b) The Arkansas Lottery Commission Legislative Oversight Committee shall consist of the following members of the General Assembly appointed as follows:

(1) Six (6) members of the House of Representatives shall be appointed to the Arkansas Lottery Commission Legislative Oversight Committee by the Speaker of the House of Representatives; and

(2) Six (6) members of the Senate shall be appointed to the Arkansas Lottery Commission Legislative Oversight Committee by the President Pro Tempore of the Senate.

(c) In making appointments, each appointing officer shall select members who have appropriate experience and knowledge of the issues to be examined by the Arkansas Lottery Commission Legislative Oversight Committee and may consider racial, gender, and geographical diversity among the membership.

(d) The Arkansas Lottery Commission Legislative Oversight Committee shall:

(1) Review whether expenditures of lottery proceeds have been in accordance with this chapter;

(2) Review proposed rules of the Arkansas Lottery Commission;

(3)(A) Review proposed contracts of twenty-five thousand dollars (\$25,000) or more before the execution of the contracts.

(B) The commission shall provide a list of all contracts less than twenty-five thousand dollars (\$25,000) to the Arkansas Lottery Commission Legislative Oversight Committee on a monthly basis;

(4) Review reports filed with the Arkansas Lottery Commission Legislative Oversight Committee by the Department of Higher Education, including without limitation reports filed under §§ 6-85-205 and 6-85-220;

(5) Perform its duties under § 6-85-220; and

(6) Study other lottery matters as the Arkansas Lottery Commission Legislative Oversight Committee considers necessary to fulfill its mandate.

(e)(1) Annually by December 15, the Arkansas Lottery Commission Legislative Oversight Committee shall provide to the General Assembly:

(A) Any analysis or findings resulting from its activities under this section that the Arkansas Lottery Commission Legislative Oversight Committee deems relevant; and

(B) Its recommendations for any changes to the:

(i) Scholarship award amounts;

(ii) Number or type of scholarships; and

(iii) Scholarship eligibility requirements.

(2) The Arkansas Lottery Commission Legislative Oversight Committee may make interim reports to the General Assembly regarding the expenditure of net lottery revenues.

(f)(1) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a Cochair of the Arkansas Lottery Commission Legislative Oversight Committee.

(2) The Arkansas Lottery Commission Legislative Oversight Committee shall meet at least quarterly upon the joint call of the cochairs of the Arkansas Lottery Commission Legislative Oversight Committee.

(3) A majority of the Arkansas Lottery Commission Legislative Oversight Committee constitutes a quorum.

(4) No action may be taken by the Arkansas Lottery Commission Legislative Oversight Committee except by a majority vote at a meeting at which a quorum is present.

(g) Members of the Arkansas Lottery Commission Legislative Oversight Committee are entitled to per diem and mileage at the same rate authorized by law for attendance at meetings of interim committees of the General Assembly and shall be paid from the same source.

(h)(1) With the consent of both the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Arkansas Lottery Commission Legislative Oversight Committee may meet during a session of the General Assembly to perform its duties under this chapter.

(2) This subsection does not limit the authority of the Arkansas Lottery Commission Legislative Oversight Committee to meet during a recess as authorized by § 10-3-211 or § 10-2-223.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, §§ 47, 48; 2010, No. 265, § 35; 2010, No. 294, § 35; 2011, No. 207, § 30.

Amendments. The 2009 amendment by No. 1405 rewrote (d)(3); and added (h).

The 2010 amendment by identical acts Nos. 265 and 294, in (f)(3), substituted “A

majority” for “Six (6) members” and “constitutes” for “constitute.”

The 2011 amendment substituted “Annually by December 15” for “By November 1 of each year” in the introductory language of (e)(1).

23-115-1102. Filing of information with Arkansas Lottery Commission Legislative Oversight Committee.

(a) It is the intent of the General Assembly that the Arkansas Lottery Commission Legislative Oversight Committee perform the monitoring and oversight functions of the Legislative Council for the Arkansas Lottery Commission.

(b) All contracts, rules, reports, or other information required by law to be filed by the commission with the Legislative Council:

(1) Shall not be filed with the Legislative Council; and

(2) Shall be filed with the Arkansas Lottery Commission Legislative Oversight Committee.

(c)(1) The Arkansas Lottery Commission Legislative Oversight Committee shall perform all duties or functions of the Legislative Council required by law concerning the contracts, rules, reports, or other information filed with the Arkansas Lottery Commission Legislative Oversight Committee under subsection (b) of this section.

(2) The Bureau of Legislative Research shall provide staff for the Arkansas Lottery Commission Legislative Oversight Committee.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2010, No. 265, § 36; 2010, No. 294, § 36.

Publisher's Notes. This section is being set out to reflect a correction in the 2011 supplement.

Amendments. The 2010 amendment by identical acts Nos. 265 and 294 added (c)(2).

